

Title 18-A: PROBATE CODE

Article 5: Protection of Persons under Disability and Their Property

Table of Contents

Part 1. GENERAL PROVISIONS.....	9
Section 5-101. DEFINITIONS AND USE OF TERMS.....	9
Section 5-102. JURISDICTION OF SUBJECT MATTER; CONSOLIDATION OF PROCEEDINGS.....	11
Section 5-103. FACILITY OF PAYMENT OR DELIVERY.....	11
Section 5-104. DELEGATION OF POWERS BY PARENT OR GUARDIAN.....	12
Section 5-105. LIMITED GUARDIANSHIPS.....	13
Part 2. GUARDIANS OF MINORS.....	14
Section 5-201. STATUS OF GUARDIAN OF MINOR; GENERAL.....	14
Section 5-202. TESTAMENTARY APPOINTMENT OF GUARDIAN OF MINOR.....	14
Section 5-203. OBJECTION BY MINOR OF 14 OR OLDER TO TESTAMENTARY APPOINTMENT.....	14
Section 5-204. COURT APPOINTMENT OF GUARDIAN OF MINOR; CONDITIONS FOR APPOINTMENT.....	14
Section 5-205. COURT APPOINTMENT OF GUARDIAN OF MINOR; VENUE.....	15
Section 5-206. COURT APPOINTMENT OF GUARDIAN OF MINOR; QUALIFICATIONS; PRIORITY OF MINOR'S NOMINEE.....	16
Section 5-207. COURT APPOINTMENT OF GUARDIAN OF MINOR; PROCEDURE.....	16
Section 5-208. CONSENT TO SERVICE BY ACCEPTANCE OF APPOINTMENT; NOTICE.....	17
Section 5-209. POWERS AND DUTIES OF GUARDIAN OF MINOR.....	17
Section 5-210. TERMINATION OF APPOINTMENT OF GUARDIAN; GENERAL.....	18
Section 5-211. PROCEEDINGS SUBSEQUENT TO APPOINTMENT; VENUE.....	18
Section 5-212. RESIGNATION OR REMOVAL PROCEEDINGS.....	19
Section 5-213. TRANSITIONAL ARRANGEMENTS FOR MINORS.....	19
Part 3. GUARDIANS OF INCAPACITATED PERSONS.....	19
Section 5-301. TESTAMENTARY APPOINTMENT OF GUARDIAN FOR INCAPACITATED PERSON.....	20
Section 5-302. VENUE.....	20
Section 5-303. PROCEDURE FOR COURT APPOINTMENT OF A GUARDIAN OF AN INCAPACITATED PERSON.....	21
Section 5-304. FINDINGS; ORDER OF APPOINTMENT.....	22
Section 5-305. ACCEPTANCE OF APPOINTMENT; CONSENT TO JURISDICTION.....	23
Section 5-306. TERMINATION OF GUARDIANSHIP FOR INCAPACITATED PERSON.....	23
Section 5-307. REMOVAL OR RESIGNATION OF GUARDIAN; TERMINATION OF GUARDIANSHIP.....	23

Section 5-308. VISITOR IN GUARDIANSHIP PROCEEDINGS.....	24
Section 5-309. NOTICES IN GUARDIANSHIP PROCEEDINGS.....	24
Section 5-310. TEMPORARY GUARDIANS (REPEALED).....	25
Section 5-310-A. TEMPORARY GUARDIANS.....	25
Section 5-311. WHO MAY BE GUARDIAN; PRIORITIES.....	28
Section 5-312. GENERAL POWERS AND DUTIES OF GUARDIAN.....	29
Section 5-313. PROCEEDINGS SUBSEQUENT TO APPOINTMENT; VENUE.....	30
Part 4. PROTECTION OF PROPERTY OF PERSONS UNDER DISABILITY AND MINORS.....	30
Section 5-401. PROTECTIVE PROCEEDINGS.....	30
Section 5-402. PROTECTIVE PROCEEDINGS; JURISDICTION OF AFFAIRS OF PROTECTED PERSONS.....	31
Section 5-403. VENUE.....	31
Section 5-404. ORIGINAL PETITION FOR APPOINTMENT OR PROTECTIVE ORDER.....	32
Section 5-405. NOTICE.....	33
Section 5-406. PROTECTIVE PROCEEDINGS; REQUEST FOR NOTICE; INTERESTED PERSON.....	33
Section 5-407. PROCEDURE CONCERNING HEARING AND ORDER ON ORIGINAL PETITION.....	34
Section 5-408. PERMISSIBLE COURT ORDERS.....	35
Section 5-408-A. TEMPORARY CONSERVATOR.....	36
Section 5-409. PROTECTIVE ARRANGEMENTS AND SINGLE TRANSACTIONS AUTHORIZED.....	39
Section 5-410. WHO MAY BE APPOINTED CONSERVATOR; PRIORITIES.....	40
Section 5-411. BOND.....	41
Section 5-412. TERMS AND REQUIREMENTS OF BONDS.....	42
Section 5-413. ACCEPTANCE OF APPOINTMENT; CONSENT TO JURISDICTION.....	42
Section 5-414. COMPENSATION AND EXPENSES.....	42
Section 5-415. DEATH, RESIGNATION OR REMOVAL OF CONSERVATOR.....	43
Section 5-416. PETITIONS FOR ORDERS SUBSEQUENT TO APPOINTMENT.....	43
Section 5-417. GENERAL DUTY OF CONSERVATOR.....	43
Section 5-418. INVENTORY AND RECORDS.....	43
Section 5-419. ACCOUNTS.....	44
Section 5-420. CONSERVATORS; TITLE BY APPOINTMENT.....	45
Section 5-421. RECORDING OF CONSERVATOR'S LETTERS.....	45
Section 5-422. SALE, ENCUMBRANCE OR TRANSACTION INVOLVING CONFLICT OF INTEREST; VOIDABLE; EXCEPTIONS.....	46
Section 5-423. PERSONS DEALING WITH CONSERVATORS; PROTECTION.....	46
Section 5-424. POWERS OF CONSERVATOR IN ADMINISTRATION.....	46
Section 5-425. DISTRIBUTIVE DUTIES AND POWERS OF CONSERVATOR.....	48

Section 5-426. ENLARGEMENT OR LIMITATION OF POWERS OF CONSERVATOR.....	50
Section 5-427. PRESERVATION OF ESTATE PLAN.....	50
Section 5-428. CLAIMS AGAINST PROTECTED PERSON; ENFORCEMENT.....	50
Section 5-429. INDIVIDUAL LIABILITY OF CONSERVATOR.....	51
Section 5-430. TERMINATION OF PROCEEDING.....	51
Section 5-431. PAYMENT OF DEBT AND DELIVERY OF PROPERTY TO FOREIGN CONSERVATOR WITHOUT LOCAL PROCEEDINGS.....	52
Section 5-432. FOREIGN CONSERVATOR; PROOF OF AUTHORITY; BOND; POWERS.....	52
Part 5. DURABLE POWER OF ATTORNEY	52
Section 5-501. DEFINITION (REPEALED).....	52
Section 5-502. DURABLE POWER OF ATTORNEY NOT AFFECTED BY DISABILITY OR INCAPACITY (REPEALED).....	53
Section 5-503. RELATION OF ATTORNEY-IN-FACT TO COURT-APPOINTED FIDUCIARY (REPEALED).....	53
Section 5-504. POWER OF ATTORNEY NOT REVOKED UNTIL NOTICE (REPEALED).....	53
Section 5-505. PROOF OF CONTINUANCE OF DURABLE AND OTHER POWERS OF ATTORNEY BY AFFIDAVIT (REPEALED).....	53
Section 5-506. DURABLE HEALTH CARE POWER OF ATTORNEY (REPEALED).....	53
Section 5-508. DURABLE FINANCIAL POWER OF ATTORNEY (REPEALED).....	53
Section 5-509. IN-PERSON SIGNATURE REQUIRED (REPEALED).....	53
Section 5-510. RECOGNITION OF POWERS OF ATTORNEY FROM OTHER JURISDICTIONS (REPEALED).....	54
Part 5-A. UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT.....	54
Subpart 1. GENERAL PROVISIONS.....	54
Section 5-511. SHORT TITLE.....	54
Section 5-512. DEFINITIONS.....	54
Section 5-513. INTERNATIONAL APPLICATION OF PART.....	55
Section 5-514. COMMUNICATION BETWEEN COURTS.....	56
Section 5-515. COOPERATION BETWEEN COURTS.....	56
Section 5-516. TAKING TESTIMONY IN ANOTHER STATE.....	57
Subpart 2. JURISDICTION.....	57
Section 5-521. DEFINITIONS; SIGNIFICANT CONNECTION FACTORS.....	57
Section 5-522. EXCLUSIVE BASIS.....	58
Section 5-523. JURISDICTION.....	58
Section 5-524. SPECIAL JURISDICTION.....	59
Section 5-525. EXCLUSIVE AND CONTINUING JURISDICTION.....	59
Section 5-526. APPROPRIATE FORUM.....	59
Section 5-527. JURISDICTION DECLINED BY REASON OF CONDUCT.....	60
Section 5-528. NOTICE OF PROCEEDING.....	61
Section 5-529. PROCEEDINGS IN MORE THAN ONE STATE.....	61

Subpart 3. TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP.....	61
Section 5-531. TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP TO ANOTHER STATE.....	62
Section 5-532. ACCEPTING GUARDIANSHIP OR CONSERVATORSHIP TRANSFERRED FROM ANOTHER STATE.....	63
Subpart 4. REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES.....	64
Section 5-541. REGISTRATION OF GUARDIANSHIP.....	64
Section 5-542. REGISTRATION OF PROTECTIVE ORDERS.....	64
Section 5-543. EFFECT OF REGISTRATION	64
Subpart 5. MISCELLANEOUS PROVISIONS.....	64
Section 5-551. UNIFORMITY OF APPLICATION AND CONSTRUCTION.....	65
Section 5-552. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.....	65
Section 5-553. TRANSITIONAL PROVISIONS.....	65
Section 5-554. EFFECTIVE DATE.....	65
Part 6. PUBLIC GUARDIAN AND CONSERVATOR.....	65
Section 5-601. PUBLIC GUARDIANS AND CONSERVATORS; GENERAL.....	65
Section 5-602. PRIORITY OF PRIVATE GUARDIAN OR CONSERVATOR.....	66
Section 5-603. EXCLUSIVENESS OF PUBLIC GUARDIAN OR CONSERVATOR.....	66
Section 5-604. NOMINATION OF PUBLIC GUARDIAN OR CONSERVATOR.....	66
Section 5-605. ACCEPTANCE BY PUBLIC GUARDIAN OR CONSERVATOR; PLAN.....	67
Section 5-606. OFFICIALS AUTHORIZED TO ACT AS PUBLIC GUARDIAN OR CONSERVATOR.....	67
Section 5-607. DUTIES AND POWERS OF A PUBLIC GUARDIAN OR CONSERVATOR.....	67
Section 5-608. DETERMINATION OF NEED FOR GUARDIANSHIP OF MENTALLY RETARDED PERSONS IN INSTITUTIONS AND RESIDENCE FACILITIES (REPEALED).....	68
Section 5-609. NO CHANGE IN RIGHTS TO SERVICES.....	68
Section 5-610. NO CHANGE IN POWERS AND DUTIES OF AGENCY HEADS AND TRUSTEES.....	69
Section 5-611. BOND.....	69
Section 5-612. COMPENSATION.....	69
Section 5-613. INCAPACITATED PERSONS; GUARDIAN AD LITEM COSTS.....	69
Section 5-614. LIMITED PUBLIC GUARDIANSHIPS.....	70
Part 7. LIVING WILLS	70
Section 5-701. SHORT TITLE AND DEFINITIONS (REPEALED).....	70
Section 5-702. DECLARATION RELATING TO USE OF LIFE-SUSTAINING TREATMENT (REPEALED).....	70
Section 5-703. WHEN DECLARATION OPERATIVE (REPEALED).....	70
Section 5-704. REVOCATION OF DECLARATION (REPEALED).....	71

Section 5-705. RECORDING DETERMINATION OF TERMINAL CONDITION OR PERSISTENT VEGETATIVE STATE AND DECLARATION (REPEALED).....	71
Section 5-706. TREATMENT OF QUALIFIED PATIENTS (REPEALED).....	71
Section 5-707. CONSENT BY OTHERS TO WITHDRAWAL OR WITHHOLDING OF TREATMENT (REPEALED).....	71
Section 5-708. TRANSFER OF PATIENTS (REPEALED).....	71
Section 5-709. IMMUNITIES (REPEALED).....	71
Section 5-710. PENALTIES (REPEALED).....	71
Section 5-711. MISCELLANEOUS PROVISIONS (REPEALED).....	71
Section 5-712. WHEN HEALTH-CARE PROVIDER MAY PRESUME VALIDITY OF DECLARATION (REPEALED).....	72
Section 5-713. RECOGNITION OF DECLARATION EXECUTED IN ANOTHER STATE (REPEALED).....	72
Section 5-714. EFFECT OF PREVIOUS DECLARATION (REPEALED).....	72
Part 8. UNIFORM HEALTH-CARE DECISIONS ACT	72
Section 5-801. DEFINITIONS.....	72
Section 5-802. ADVANCE HEALTH-CARE DIRECTIVES.....	74
Section 5-803. REVOCATION OF ADVANCE HEALTH-CARE DIRECTIVE.....	76
Section 5-804. OPTIONAL FORM.....	76
Section 5-805. DECISIONS BY SURROGATE.....	81
Section 5-806. DECISIONS BY GUARDIAN.....	83
Section 5-807. OBLIGATIONS OF HEALTH-CARE PROVIDER.....	83
Section 5-808. HEALTH-CARE INFORMATION.....	85
Section 5-809. IMMUNITIES.....	85
Section 5-810. STATUTORY DAMAGES.....	85
Section 5-811. CAPACITY.....	86
Section 5-812. EFFECT OF COPY.....	86
Section 5-813. EFFECT OF PART.....	86
Section 5-814. JUDICIAL RELIEF.....	87
Section 5-815. UNIFORMITY OF APPLICATION AND CONSTRUCTION.....	87
Section 5-816. SHORT TITLE.....	87
Section 5-817. EFFECTIVE DATE.....	87
Section 5-818. MILITARY ADVANCED MEDICAL DIRECTIVES.....	87
Part 9. MAINE UNIFORM POWER OF ATTORNEY ACT.....	87
Subpart 1. GENERAL PROVISIONS AND DEFINITIONS.....	87
Section 5-901. SHORT TITLE.....	88
Section 5-902. DEFINITIONS.....	88
Section 5-903. APPLICABILITY.....	90
Section 5-904. POWER OF ATTORNEY IS DURABLE.....	90
Section 5-905. EXECUTION OF POWER OF ATTORNEY; NOTICES.....	90
Section 5-906. VALIDITY OF POWER OF ATTORNEY.....	91
Section 5-907. MEANING AND EFFECT OF POWER OF ATTORNEY.....	92

Section 5-908. NOMINATION OF CONSERVATOR OR GUARDIAN; RELATION OF AGENT TO COURT-APPOINTED FIDUCIARY.....	92
Section 5-909. WHEN POWER OF ATTORNEY EFFECTIVE.....	92
Section 5-910. TERMINATION OF POWER OF ATTORNEY OR AGENT'S AUTHORITY.....	93
Section 5-911. COAGENTS AND SUCCESSOR AGENTS.....	94
Section 5-912. REIMBURSEMENT AND COMPENSATION OF AGENT.....	95
Section 5-913. AGENT'S ACCEPTANCE.....	95
Section 5-914. AGENT'S DUTIES.....	95
Section 5-915. EXONERATION OF AGENT.....	97
Section 5-916. JUDICIAL RELIEF.....	97
Section 5-917. AGENT'S LIABILITY.....	98
Section 5-918. AGENT'S RESIGNATION; NOTICE.....	98
Section 5-919. ACCEPTANCE OF AND RELIANCE UPON ACKNOWLEDGED POWER OF ATTORNEY.....	99
Section 5-920. LIABILITY FOR REFUSAL TO ACCEPT ACKNOWLEDGED POWER OF ATTORNEY.....	100
Section 5-921. PRINCIPLES OF LAW AND EQUITY.....	101
Section 5-922. LAWS APPLICABLE TO FINANCIAL INSTITUTIONS AND ENTITIES.....	101
Section 5-923. REMEDIES UNDER OTHER LAW.....	101
Subpart 2. AUTHORITY.....	101
Section 5-931. AUTHORITY THAT REQUIRES SPECIFIC GRANT; GRANT OF GENERAL AUTHORITY.....	101
Section 5-932. INCORPORATION OF AUTHORITY.....	103
Section 5-933. CONSTRUCTION OF AUTHORITY GENERALLY.....	103
Section 5-934. REAL PROPERTY.....	104
Section 5-935. TANGIBLE PERSONAL PROPERTY.....	106
Section 5-936. STOCKS AND BONDS.....	107
Section 5-937. COMMODITIES AND OPTIONS.....	107
Section 5-938. BANKS AND OTHER FINANCIAL INSTITUTIONS.....	107
Section 5-939. OPERATION OF ENTITY OR BUSINESS.....	109
Section 5-940. INSURANCE AND ANNUITIES.....	110
Section 5-941. ESTATES, TRUSTS AND OTHER BENEFICIAL INTERESTS.....	112
Section 5-942. CLAIMS AND LITIGATION.....	112
Section 5-943. PERSONAL AND FAMILY MAINTENANCE.....	114
Section 5-944. BENEFITS FROM GOVERNMENTAL PROGRAMS OR CIVIL OR MILITARY SERVICE.....	115
Section 5-945. RETIREMENT PLANS.....	115
Section 5-946. TAXES.....	116
Section 5-947. GIFTS.....	117
Subpart 3. STATUTORY FORMS.....	117
Section 5-951. AGENT'S CERTIFICATION.....	117
Subpart 4. MISCELLANEOUS PROVISIONS.....	118
Section 5-961. UNIFORMITY OF APPLICATION AND CONSTRUCTION.....	118

Section 5-962. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.....	119
Section 5-963. EFFECT ON EXISTING POWERS OF ATTORNEY.....	119
Section 5-964. EFFECTIVE DATE.....	119

Maine Revised Statutes
Title 18-A: PROBATE CODE

Article 5: Protection of Persons under Disability and Their Property

Part 1: GENERAL PROVISIONS

§5-101. DEFINITIONS AND USE OF TERMS

Unless otherwise apparent from the context, in this Code: [1979, c. 540, §1 (NEW).]

(1). "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause except minority to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person;

[1979, c. 540, §1 (NEW) .]

(1-A). The "best interest of the child" is determined according to this subsection.

(a). In determining the best interest of the child the court shall consider the following factors:

- (1) The wishes of the party or parties as to custody;
- (2) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference;
- (3) The child's primary caregiver;
- (4) The bonding and attachment between each party and the child;
- (5) The interaction and interrelationship of the child with a party or parties, siblings and any other person who may significantly affect the child's best interest;
- (6) The child's adjustment to home, school and community;
- (7) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- (8) The permanence, as a family unit, of the existing or proposed home;
- (9) The mental and physical health of all individuals involved;
- (10) The child's cultural background;
- (11) The capacity and disposition of the parties to give the child love, affection and guidance and to continue educating and raising the child in the child's culture and religion or creed, if any;
- (12) The effect on the child of the actions of an abuser if related to domestic violence that has occurred between the parents or other parties; and
- (13) All other factors having a reasonable bearing on the physical and psychological well-being of the child. [2005, c. 371, §1 (NEW).]

(b). The court may not consider any one of the factors set out in paragraph (a) to the exclusion of all others; [2005, c. 371, §1 (NEW).]

[2005, c. 371, §1 (NEW) .]

(1-B). "De facto guardian" means an individual with whom, within the 24 months immediately preceding the filing of a petition under section 5-204, subsection (d), a child has resided for the following applicable period and during which period there has been a demonstrated lack of consistent participation by the parent or legal custodian:

- (a). If the child at the time of filing the petition is under 3 years of age, 6 months or more, which need not be consecutive; or [2005, c. 371, §1 (NEW) .]
- (b). If the child at the time of filing the petition is at least 3 years of age, 12 months or more, which need not be consecutive. [2005, c. 371, §1 (NEW) .]

"De facto guardian" does not include an individual who has a guardian's powers delegated to the individual by a parent or guardian of a child under section 5-104, adopts a child under Article 9 or has a child placed in the individual's care under Title 22, chapter 1071;

[2005, c. 371, §1 (NEW) .]

(1-C). "Demonstrated lack of consistent participation" means refusal or failure to comply with the duties imposed upon a parent by the parent-child relationship, including but not limited to providing the child necessary food, clothing, shelter, health care, education, a nurturing and consistent relationship and other care and control necessary for the child's physical, mental and emotional health and development.

In determining whether there has been a demonstrated lack of consistent participation in the child's life by the parent or legal custodian, the court shall consider at least the following factors:

- (a). The intent of the parent, parents or legal custodian in placing the child with the person petitioning as a de facto guardian; [2005, c. 371, §1 (NEW) .]
- (b). The amount of involvement the parent, parents or legal custodian had with the child during the parent's, parents' or legal custodian's absence; [2005, c. 371, §1 (NEW) .]
- (c). The facts and circumstances of the parent's, parents' or legal custodian's absence; [2005, c. 371, §1 (NEW) .]
- (d). The parent's, parents' or legal custodian's refusal to comply with conditions for retaining custody set forth in any previous court orders; and [2005, c. 371, §1 (NEW) .]
- (e). Whether the nonconsenting parent, parents or legal custodian was previously prevented from participating in the child's life as a result of domestic violence or child abuse or neglect. [2005, c. 371, §1 (NEW) .]

Serving as a member of the United States Armed Forces may not be considered demonstration of lack of consistent participation;

[2005, c. 371, §1 (NEW) .]

(1-D). "Parent" means a person who has established a parent-child relationship with the child under Title 19-A, chapter 61.

[2015, c. 296, Pt. C, §4 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

(2). A "protective proceeding" is a proceeding under the provisions of section 5-401 to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise inconvenienced, or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief;

[1979, c. 540, §1 (NEW) .]

(3). A "protected person" is a minor or other person for whom a conservator has been appointed or other protective order has been made;

[1979, c. 540, §1 (NEW) .]

(4). A "ward" is a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 2005, c. 371, §1 (AMD). 2015, c. 296, Pt. C, §4 (AMD). 2015, c. 296, Pt. D, §1 (AFF).

§5-102. JURISDICTION OF SUBJECT MATTER; CONSOLIDATION OF PROCEEDINGS

(a). Subject to Title 4, section 152, subsection 5-A, the court has exclusive jurisdiction over guardianship proceedings and has jurisdiction over protective proceedings to the extent provided in section 5-402.

[2015, c. 460, §6 (AMD) .]

(b). When both guardianship and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 2015, c. 460, §6 (AMD).

§5-103. FACILITY OF PAYMENT OR DELIVERY

Any person under a duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding \$5,000 per year, by paying or delivering the money or property to (1) the minor, if married; (2) any person having the care and custody of the minor with whom the minor resides; (3) a guardian of the minor; or (4) a financial institution incident to a deposit in a federally insured savings account in the sole name of the minor and giving notice of the deposit to the minor. This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending. Persons who pay or deliver money or property in accordance with the provisions of this section are not responsible for actions taken by another after payment or delivery. The persons, other than the minor or any financial institution under (4) above, receiving money or property for a minor, are obligated to apply the money to the support and education of the minor, but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. Any excess sums must be preserved for future support of the minor and any balance not so used and any property received for the minor must be turned over to the minor when the minor attains majority. Prior to distribution, the custodian of the money or property shall account to the court and the minor. [1991, c. 641, §1 (AMD).]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1991, c. 641, §1 (AMD).

§5-104. DELEGATION OF POWERS BY PARENT OR GUARDIAN

(a). A parent or guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding 12 months, any of that parent's or guardian's powers regarding care, custody or property of the minor child or ward, except the power to consent to marriage, adoption of a minor ward or termination of parental rights to the minor. A delegation by a court-appointed guardian becomes effective only when the power of attorney is filed with the court. A delegation of powers under this section does not deprive the parent or guardian of any parental or legal authority regarding the care and custody of the minor or incapacitated person.

[2015, c. 467, §1 (AMD) .]

(b). Notwithstanding subsection (a), unless otherwise stated in the power of attorney, if the parent or guardian is a member of the National Guard or Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days, a power of attorney that would otherwise expire is automatically extended until 30 days after the parent or guardian is no longer under those active duty orders or until an order of the court so provides.

This subsection applies only if the parent or guardian's service is in support of:

- (1). An operational mission for which members of the reserve components have been ordered to active duty without their consent; or [1997, c. 455, §7 (NEW) .]
- (2). Forces activated during a period of war declared by Congress or a period of national emergency declared by the President or Congress. [1997, c. 455, §7 (NEW) .]

[2003, c. 583, §2 (AMD) .]

(c). This subsection applies when a parent or guardian executes a power of attorney under subsection (a) for the purpose of providing for the temporary care of a minor.

- (1). The execution of a power of attorney under subsection (a), without other evidence, does not constitute abandonment, abuse or neglect. A parent or guardian of a minor may not execute a power of attorney with the intention of permanently avoiding or divesting the parent or guardian of parental and legal responsibility for the care of the minor. Upon the expiration or termination of the power of attorney, the minor must be returned to the custody of the parent or guardian as soon as reasonably possible unless otherwise ordered by the court. [2015, c. 467, §2 (NEW) .]
- (2). Unless the power of attorney is terminated, the agent named in the power of attorney shall exercise parental or legal authority on a continuous basis without compensation from the State for the duration of the power of attorney authorized by subsection (a). Nothing in this subsection disqualifies the agent from applying for and receiving benefits from any state or federal program of assistance for the minor or the agent. Nothing in this subsection prevents individuals or religious, community or other charitable organizations from voluntarily providing the agent with support related to the care of the minor while the minor is in the temporary care of the agent. [2015, c. 467, §2 (NEW) .]
- (3). A minor may not be considered placed in foster care or in any way a ward of the State by virtue of the parent's or guardian's execution of a power of attorney authorized by subsection (a). The agent named in the power of attorney may not be considered a family foster home by virtue of the parent's or guardian's execution of a power of attorney authorized by subsection (a) and is not subject to any laws regarding the licensure or regulation of family foster homes unless licensed as a family foster home. Nothing in this subsection disqualifies the agent from being or becoming a family foster home licensed by the State or prevents the placement of the minor in the agent's care if the minor enters state custody. [2015, c. 467, §2 (NEW) .]
- (4). An organization, other than an organization whose primary purpose is to provide free legal services, that is exempt from federal income taxation under Section 501(a) of the United States Internal Revenue Code of 1986 as an organization described by Section 501(c)(3) and that assists parents or guardians

with the process of executing a power of attorney for the temporary care of a minor shall ensure that a background check is conducted for the agent and any adult members of the agent's household, whether by completing the background check directly or by verifying that a current background check has already been conducted. The background check must include the following sources, and the results must be shared with the parent or guardian and the proposed agent:

- (i) A screening for child and adult abuse, neglect or exploitation cases in the records of the Department of Health and Human Services; and
- (ii) A criminal history record check that includes information obtained from the Federal Bureau of Investigation.

The organization shall maintain records on the training and background checks of agents, including the content and dates of training and full transcripts of background checks, for a period of not less than 5 years after the minor attains 18 years of age. The organization shall make the records available to a parent or guardian executing a power of attorney under this subsection and to the ombudsman under Title 22, section 4087-A and any local, state or federal authority conducting an investigation involving the agent, the parent or guardian or the minor. [2015, c. 467, §2 (NEW) .]

(5). An employee or volunteer for an organization described in paragraph (4) may not further assist with a process that results in the completion of a power of attorney for the temporary care of a minor if the background checks conducted pursuant to paragraph (4), subparagraphs (i) and (ii) disclose any substantiated allegations of child abuse, neglect or exploitation or any crimes that would disqualify the agent from becoming a licensed family foster home in the State. [2015, c. 467, §2 (NEW) .]

(6). The following penalties apply to violations of this subsection.

- (i) An organization that knowingly fails to perform or verify the background checks or fails to share the background check information as required by this subsection is subject to a civil penalty not to exceed \$5,000, payable to the State and recoverable in a civil action.
- (ii) An organization or an employee or volunteer of an organization that continues to assist a parent, guardian or agent in completing a power of attorney under this subsection if the background checks conducted pursuant to paragraph (4) disclose any substantiated allegations of child abuse, neglect or exploitation or any crimes that would disqualify the agent from becoming a licensed family foster home is subject to a civil penalty not to exceed \$5,000, payable to the State and recoverable in a civil action.
- (iii) An organization or an employee or volunteer of an organization that knowingly fails to maintain records or to disclose information as required by this subsection is subject to a civil penalty not to exceed \$5,000, payable to the State and recoverable in a civil action. [2015, c. 467, §2 (NEW) .]

[2015, c. 467, §2 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1979, c. 690, §17 (AMD). 1997, c. 455, §7 (RPR). 2003, c. 583, §2 (AMD). 2011, c. 43, §1 (AMD). 2015, c. 467, §§1, 2 (AMD).

§5-105. LIMITED GUARDIANSHIPS

In any case in which a guardian can be appointed by the court, the judge may appoint a limited guardian with fewer than all of the legal powers and duties of a guardian. The specific duties and powers of a limited guardian shall be enumerated in the decree or court order. A person for whom a limited guardian has been appointed retains all legal and civil rights except those which have been suspended by the decree or order. [1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW).

Part 2: GUARDIANS OF MINORS

§5-201. STATUS OF GUARDIAN OF MINOR; GENERAL

A person becomes a guardian of a minor by acceptance of a testamentary appointment or upon appointment by the court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward. This section does not apply to permanency guardians appointed in District Court child protective proceedings. If a minor has a permanency guardian, the court may not appoint another guardian without leave of the District Court in which the child protective proceeding is pending. [2005, c. 372, §1 (AMD).]

SECTION HISTORY

1979, c. 540, §1 (NEW). 2005, c. 372, §1 (AMD).

§5-202. TESTAMENTARY APPOINTMENT OF GUARDIAN OF MINOR

The parent of a minor may appoint by will a guardian of an unmarried minor. Subject to the right of the minor under section 5-203, a testamentary appointment becomes effective upon filing the guardian's acceptance in the court in which the will is probated, if before acceptance, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority. This State recognizes a testamentary appointment effected by filing the guardian's acceptance under a will probated in another state which is the testator's domicile. Upon acceptance of appointment, written notice of acceptance must be given by the guardian to the minor and to the person having his care, or to his nearest adult relation. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§5-203. OBJECTION BY MINOR OF 14 OR OLDER TO TESTAMENTARY APPOINTMENT

A minor of 14 or more years may prevent an appointment of his testamentary guardian from becoming effective, or may cause a previously accepted appointment to terminate, by filing with the court in which the will is probated a written objection to the appointment before it is accepted or within 30 days after notice of its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the court in a proper proceeding of the testamentary nominee, or any other suitable person. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§5-204. COURT APPOINTMENT OF GUARDIAN OF MINOR; CONDITIONS FOR APPOINTMENT

The court may appoint a guardian or coguardians for an unmarried minor if: [1995, c. 623, §1 (RPR).]

(a). All parental rights of custody have been terminated or suspended by circumstance or prior court order;

[1995, c. 623, §1 (NEW) .]

(b). Each living parent whose parental rights and responsibilities have not been terminated or the person who is the legal custodian of the unmarried minor consents to the guardianship and the court finds that the consent creates a condition that is in the best interest of the child;

[2005, c. 371, §2 (AMD) .]

(c). The person or persons whose consent is required under subsection (b) do not consent, but the court finds by clear and convincing evidence that the person or persons have failed to respond to proper notice or a living situation has been created that is at least temporarily intolerable for the child even though the living situation does not rise to the level of jeopardy required for the final termination of parental rights, and that the proposed guardian will provide a living situation that is in the best interest of the child; or

[2005, c. 371, §2 (AMD) .]

(d). The person or persons whose consent is required under subsection (b) do not consent, but the court finds by a preponderance of the evidence that there is a de facto guardian and a demonstrated lack of consistent participation by the nonconsenting parent or legal custodian of the unmarried minor. The court may appoint the de facto guardian as guardian if the appointment is in the best interest of the child.

[2005, c. 371, §2 (NEW) .]

A guardian appointed by will as provided in section 5-202 whose appointment has not been prevented or nullified under section 5-203 has priority over any guardian who may be appointed by the court but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within 30 days after notice of the guardianship proceeding. [1995, c. 623, §1 (NEW) .]

If a proceeding is brought under subsection (c) or subsection (d), the nonconsenting parent or legal custodian is entitled to court-appointed legal counsel if indigent. In a contested action, the court may also appoint counsel for any indigent de facto guardian, guardian or petitioner when a parent or legal custodian has counsel. [2005, c. 371, §2 (AMD) .]

If a proceeding is brought under subsection (b), subsection (c) or subsection (d), the court may order a parent to pay child support in accordance with Title 19-A, Part 3. When the Department of Health and Human Services provides child support enforcement services, the Commissioner of Health and Human Services may designate employees of the department who are not attorneys to represent the department in court if a hearing is held. The commissioner shall ensure that appropriate training is provided to all employees who are designated to represent the department under this paragraph. [2005, c. 371, §2 (AMD) .]

If the court appoints a limited guardian, the court shall specify the duties and powers of the guardian, as required in section 5-105, and the parental rights and responsibilities retained by the parent of the minor. [1995, c. 623, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1995, c. 623, §1 (RPR). 1999, c. 46, §1 (AMD). 2001, c. 554, §2 (AMD). 2003, c. 689, §§B6,7 (REV). 2005, c. 371, §2 (AMD) .

§5-205. COURT APPOINTMENT OF GUARDIAN OF MINOR; VENUE

The venue for guardianship proceedings for a minor is in the place where the minor resides or is present. [1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW) .

§5-206. COURT APPOINTMENT OF GUARDIAN OF MINOR; QUALIFICATIONS; PRIORITY OF MINOR'S NOMINEE

The court may appoint as guardian any person, or as coguardians more than one person, whose appointment is in the best interest of the minor. The court shall set forth in the order of appointment the basis for determining that the appointment is in the best interest of the minor. The court shall appoint a person nominated by the minor, if the minor is 14 years of age or older, unless the court finds the appointment contrary to the best interest of the minor. The court may not appoint a guardian for a minor child who will be removed from this State for the purpose of adoption. [2005, c. 371, §3 (AMD) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1993, c. 686, §2 (AMD). 1993, c. 686, §13 (AFF). 2005, c. 371, §3 (AMD) .

§5-207. COURT APPOINTMENT OF GUARDIAN OF MINOR; PROCEDURE

(a). Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by court rule under section 1-401 to:

- (1). The minor, if he is 14 or more years of age; [1979, c. 540, §1 (NEW) .]
- (2). The person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and [1979, c. 540, §1 (NEW) .]
- (3). Any living parent of the minor. [1979, c. 540, §1 (NEW) .]

[1979, c. 540, §1 (NEW) .]

(b). Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 5-204 have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interest of the minor.

[1979, c. 540, §1 (NEW) .]

(c). If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian may not last longer than 6 months, except as provided in subsection (c-1).

Notice of hearing on the petition for the appointment of a temporary guardian must be served as provided under subsection (a), except that the notice must be given at least 5 days before the hearing, and notice need not be given to any person whose address and present whereabouts are unknown and can not be ascertained by due diligence. Upon a showing of good cause, the court may waive service of the notice of hearing on any person, other than the minor, if the minor is at least 14 years of age.

[2003, c. 583, §3 (AMD) .]

(c-1). If one of the parents of a minor is a member of the National Guard or the Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days, a temporary guardianship that would otherwise expire is automatically extended until 30 days after the parent is no longer under those active duty orders or until an order of the court so provides. This subsection applies only if the parent's service is in support of:

- (1). An operational mission for which members of the reserve components have been ordered to active duty without their consent; or [2003, c. 583, §4 (NEW) .]

(2). Forces activated during a period of war declared by Congress or a period of national emergency declared by the President or Congress. [2003, c. 583, §4 (NEW) .]

[2003, c. 583, §4 (NEW) .]

(d). If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen years of age or older.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1999, c. 303, §1 (AMD). 2003, c. 583, §§3,4 (AMD) .

§5-208. CONSENT TO SERVICE BY ACCEPTANCE OF APPOINTMENT; NOTICE

By accepting a testamentary or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian, or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner. Letters of guardianship must indicate whether the guardian was appointed by will or by court order. [1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW) .

§5-209. POWERS AND DUTIES OF GUARDIAN OF MINOR

A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of a minor and unemancipated child, except that a guardian is not legally obligated to provide from the guardian's own funds for the ward and is not liable to 3rd persons by reason of the parental relationship for acts of the ward. In particular, and without qualifying the foregoing, a guardian has the following powers and duties. [1993, c. 349, §40 (RPR) .]

(a). The guardian must take reasonable care of the ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.

[1991, c. 719, §1 (AMD) .]

(b). The guardian may receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship or custodianship. The guardian also may receive money or property of the ward paid or delivered by virtue of section 5-103. Any sums so received must be applied to the ward's current needs for support, care and education. The guardian must exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case excess must be paid over at least annually to the conservator. Sums so received by the guardian may not be used for compensation for the guardian's services except as approved by order of court or as determined by a duly appointed conservator other than the guardian. If there is no conservator, the excess funds must be turned over to the minor when the minor attains majority. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

[1993, c. 349, §41 (RPR) .]

(c). The guardian is empowered to facilitate the ward's education, social or other activities and to give or withhold consents or approvals related to medical, health or other professional care, counsel, treatment or service for the ward. The guardian is empowered to withhold or withdraw life-sustaining treatment as set forth in section 5-312, subsection (a), paragraph (3). A guardian is not liable by reason of such giving or withholding of consent for injury to the ward resulting from the negligence or acts of 3rd persons unless it would have been illegal for a parent to have so given or withheld consent. A guardian may consent to the marriage or adoption of the ward.

[1995, c. 378, Pt. B, §1 (AMD) .]

(d). A guardian must report the condition of the ward and the ward's estate that has been subject to that guardian's possession or control, as ordered by court on petition of any person interested in the minor's welfare or as required by court rule. If the guardian has received any funds pursuant to section 5-103, the guardian shall account to the court and the minor regarding how the funds were expended prior to the termination of that person's responsibilities as guardian.

[1993, c. 349, §41 (RPR) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1991, c. 641, §§2,3 (AMD). 1991, c. 719, §1 (AMD). 1993, c. 349, §§40,41 (AMD). 1995, c. 378, §B1 (AMD).

§5-210. TERMINATION OF APPOINTMENT OF GUARDIAN; GENERAL

A guardian's authority and responsibility terminates upon the death, resignation or removal of the guardian or upon the minor's death, adoption, marriage or attainment of majority, but termination does not affect his liability for prior acts, nor his obligation to account for funds and assets of his ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§5-211. PROCEEDINGS SUBSEQUENT TO APPOINTMENT; VENUE

(a). The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting and other proceedings relating to the guardianship.

[1979, c. 540, §1 (NEW) .]

(b). If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian must be sent to the court in which acceptance of appointment is filed.

[2005, c. 371, §4 (AMD) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 2005, c. 371, §4 (AMD).

§5-212. RESIGNATION OR REMOVAL PROCEEDINGS

(a). Any person interested in the welfare of a ward, or the ward, if 14 or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.

[1979, c. 540, §1 (NEW) .]

(b). After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

[1979, c. 540, §1 (NEW) .]

(c). If, at any time in the proceeding, the court determines that the interests of the ward are, or may be, inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is 14 or more years of age.

[1979, c. 540, §1 (NEW) .]

(d). The court may not terminate the guardianship in the absence of the guardian's consent unless the court finds by a preponderance of the evidence that the termination is in the best interest of the ward. The petitioner has the burden of showing by a preponderance of the evidence that termination of the guardianship is in the best interest of the ward. If the court does not terminate the guardianship, the court may dismiss subsequent petitions for termination of the guardianship unless there has been a substantial change of circumstances.

[2005, c. 371, §5 (AMD) .]

(e). In a contested action, the court may appoint counsel for any indigent guardian or petitioner.

[2005, c. 371, §6 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1995, c. 623, §2 (NEW). 2005, c. 371, §§5,6 (AMD) .

§5-213. TRANSITIONAL ARRANGEMENTS FOR MINORS

In issuing, modifying or terminating an order of guardianship for a minor, the court may enter an order providing for transitional arrangements for the minor if the court determines that such arrangements will assist the minor with a transition of custody and are in the best interest of the child. Orders providing for transitional arrangements may include, but are not limited to, rights of contact, housing, counseling or rehabilitation.

[2011, c. 43, §2 (NEW) .]

SECTION HISTORY

2011, c. 43, §2 (NEW) .

Part 3: GUARDIANS OF INCAPACITATED PERSONS

§5-301. TESTAMENTARY APPOINTMENT OF GUARDIAN FOR INCAPACITATED PERSON

(a). The parent of an incapacitated person may by will appoint a guardian of the incapacitated person. A testamentary appointment by a parent becomes effective when, after having given 7 days prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is formally or informally probated, if prior thereto both parents are dead or the surviving parent is judged incapacitated, and if the incapacitated person is not under the care of his spouse. If both parents are dead, an effective appointment by the parent who died later has priority unless it is terminated by the denial of probate in formal proceedings.

[1979, c. 540, §1 (NEW) .]

(b). The spouse of a married incapacitated person may by will appoint a guardian of the incapacitated person. The appointment becomes effective when, after having given 7 days prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated. An effective appointment by a spouse has priority over an appointment by a parent unless it is terminated by the denial of probate in formal proceedings.

[1979, c. 540, §1 (NEW) .]

(c). This State shall recognize a testamentary appointment effected by filing acceptance under a will probated at the testator's domicile in another state.

[1979, c. 540, §1 (NEW) .]

(d). On the filing with the court in which the will was probated of written objection to the appointment by the person for whom a testamentary appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the testamentary nominee or any other suitable person upon an adjudication of incapacity in proceedings under the succeeding sections of this Part.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§5-302. VENUE

The venue for guardianship proceedings for an incapacitated person is in the place where the incapacitated person resides or is present. If the incapacitated person is admitted to an institution pursuant to order of a court of competent jurisdiction, venue is also in the county in which that court sits. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§5-303. PROCEDURE FOR COURT APPOINTMENT OF A GUARDIAN OF AN INCAPACITATED PERSON

(a). The incapacitated person or any person interested in his welfare may petition for a finding of incapacity and appointment of a guardian. The person nominated to serve as guardian shall file a plan which, where relevant, shall include, but not be limited to, the type of proposed living arrangement for the ward, how the ward's financial needs will be met, how the ward's medical and other remedial needs will be met, how the ward's social needs will be met and a plan for the ward's continuing contact with relatives and friends.

[1985, c. 440, §§1, 13 (AMD) .]

(b). Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person is already represented by an attorney, the court shall appoint one or more of the following: a visitor, a guardian ad litem or an attorney to represent the allegedly incapacitated person in the proceeding. If it comes to the court's attention that the allegedly incapacitated person wishes to contest any aspect of the proceeding or to seek any limitation of the proposed guardian's powers, the court shall appoint an attorney to represent the allegedly incapacitated person. The cost of this appointment of the visitor, guardian ad litem or attorney must be paid from the estate of the allegedly incapacitated person if the court is satisfied sufficient funds are available. The person alleged to be incapacitated must be examined by a physician or by a licensed psychologist acceptable to the court who shall submit a report in writing to the court, providing diagnoses, a description of the person's actual mental and functional limitations and prognoses.

[1995, c. 203, §1 (AMD) .]

(c). If appointed, the visitor or guardian ad litem shall interview the allegedly incapacitated person and the person who is seeking appointment as guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will reside if the requested appointment is made. The visitor or guardian ad litem shall submit a report in writing to the court. The visitor or guardian ad litem shall explain the meaning and possible consequences of the requested appointment to the allegedly incapacitated person and inquire if the person wishes to attend the hearing, to contest any aspect of the proceeding or to seek any limitation of the proposed guardian's powers. If the visitor or guardian ad litem determines that the person wants to contest any issue or seek a limited appointment and that the person does not have counsel of that person's own choice, the visitor or guardian ad litem shall so indicate in the written report to the court. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see and hear all evidence bearing upon the person's condition. The person alleged to be incapacitated is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the physician, the visitor and the guardian ad litem. The issue may be determined at a closed hearing if the person alleged to be incapacitated or the person's counsel so requests.

[1995, c. 203, §1 (AMD) .]

(d). Except as otherwise provided by law, all reports and plans required by this section shall be submitted to the court, and all parties of record, at least 10 days before any hearing on the petition.

[1985, c. 440, §§1, 13 (NEW) .]

(e). When there has been an allegation of abuse, neglect or exploitation of an allegedly incapacitated person in a petition or other papers filed with the court, the court may hear the testimony of the allegedly incapacitated person in chambers with only the guardian ad litem and counsel present if the statements made are a matter of record.

[1989, c. 858, §2 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1983, c. 176, §A7 (AMD). 1983, c. 241, §1 (AMD). 1983, c. 816, §A8 (AMD). 1985, c. 440, §§1,13 (AMD). 1989, c. 858, §2 (AMD). 1993, c. 652, §1 (AMD). 1995, c. 203, §1 (AMD).

§5-304. FINDINGS; ORDER OF APPOINTMENT

(a). The court shall exercise the authority conferred in Parts 3 and 6 so as to encourage the development of maximum self reliance and independence of the incapacitated person and make appointive and other orders only to the extent necessitated by the incapacitated person's actual mental and adaptive limitations or other conditions warranting the procedure.

[1985, c. 440, §§2, 13 (NEW) .]

(b). The court may appoint a guardian or coguardians as requested if the court finds by clear and convincing evidence that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the incapacitated person.

[2009, c. 349, §1 (AMD) .]

(b-1). If the allegedly incapacitated person files voluntary written consent to the appointment of a guardian with the court or appears in court and consents to the appointment, unless the court finds the consent suspect, the court may appoint a guardian or coguardians as requested upon a finding by a preponderance of the evidence that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the incapacitated person. For the purposes of this subsection, voluntary written consent is valid only if the consent was obtained by a visitor, a guardian ad litem or an attorney representing the allegedly incapacitated person and the allegedly incapacitated person gave the consent outside the presence of the person or persons seeking guardianship.

[2009, c. 349, §2 (NEW) .]

(b-2). If the allegedly incapacitated person has not attended the hearing, the court must determine if an inquiry has been made as to whether that person wished to attend the hearing.

[2009, c. 349, §3 (NEW) .]

(c). In its order, the court may make separate findings of fact and conclusions of law. If a party requests separate findings and conclusions, within 5 days of notice of the decision, the court shall make them. As an alternative to the appointment of a guardian under subsection (b) or (b-1), the court may dismiss the proceeding or enter any other appropriate order.

[2009, c. 349, §4 (AMD) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1979, c. 690, §18 (AMD). 1985, c. 440, §§2,13 (RPR). 2003, c. 323, §1 (AMD). 2009, c. 349, §§1-4 (AMD).

§5-305. ACCEPTANCE OF APPOINTMENT; CONSENT TO JURISDICTION

By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§5-306. TERMINATION OF GUARDIANSHIP FOR INCAPACITATED PERSON

The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation as provided in section 5-307. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination does not affect his liability for prior acts nor his obligation to account for funds and assets of his ward. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§5-307. REMOVAL OR RESIGNATION OF GUARDIAN; TERMINATION OF GUARDIANSHIP

(a). On petition of the ward or any person interested in the ward's welfare, the court may remove a guardian and appoint a successor if in the best interests of the ward. On petition of the guardian, the court may accept the guardian's resignation and make any other order that may be appropriate.

[2009, c. 349, §5 (AMD) .]

(b). The ward or any person interested in the ward's welfare may petition for an order that the ward is no longer incapacitated, and for removal or resignation of the guardian. A request for this order may be made by informal letter to the court or judge and any person who knowingly interferes with transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.

[2009, c. 349, §5 (AMD) .]

(c). Before removing a guardian or accepting the resignation of a guardian, the court, following the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a guardian, may send a visitor to the residence of the present guardian and to the place where the ward resides or is detained, to observe conditions and report in writing to the court.

[2009, c. 349, §5 (AMD) .]

(d). In an action by the ward, upon presentation by the petitioner of evidence establishing a prima facie case that the ward is not incapacitated or the appointment is no longer necessary or desirable as a means of providing continuing care and supervision of the ward, the court shall order the termination unless the respondent proves by clear and convincing evidence that the ward is incapacitated and guardianship is necessary or desirable as a means of providing continuing care and supervision of the ward.

[2009, c. 349, §5 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1979, c. 690, §19 (AMD). 2009, c. 349, §5 (AMD) .

§5-308. VISITOR IN GUARDIANSHIP PROCEEDINGS

A visitor is, with respect to guardianship proceedings, a person who is trained in law, nursing, social work, or has other significant qualifications that make him suitable to perform the function, and is an officer, employee or special appointee of the court with no personal interest in the proceedings. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§5-309. NOTICES IN GUARDIANSHIP PROCEEDINGS

(a). In a proceeding for the appointment or removal of a guardian of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of hearing shall be given to each of the following:

- (1). The ward or the person alleged to be incapacitated and the ward's or person's spouse, parents, adult children and any domestic partner known to the court; [2003, c. 672, §9 (AMD).]
- (2). Any person who is serving as his guardian, conservator or who has his care and custody; and [1979, c. 540, §1 (NEW).]
- (3). In case no other person is notified under paragraph (1), at least one of his closest adult relatives or, if none, an adult friend, if any can be found. [1985, c. 440, §§3, 13 (AMD).]

[2003, c. 672, §9 (AMD) .]

(b). Notice shall be served personally on the ward or the allegedly incapacitated person at least 14 days before the date of the hearing. Waiver of notice by the ward or the person alleged to be incapacitated is not effective unless he attends the hearing or his waiver of notice is confirmed by his counsel or by his guardian ad litem or in an interview with the visitor. Representation of the ward or the allegedly incapacitated person by a guardian ad litem is not mandatory. The court may order that the petition and hearing notice be served by the visitor.

[1985, c. 656, §1 (RPR) .]

(c). Notice to the spouse, adult children, domestic partner and parents required by subsection (a) must be served by certified mail, with restricted delivery and return receipt requested, at least 14 days before the date of the hearing.

If the certified mail to the spouse or domestic partner is not delivered and that person can be found within the State, notice must be served personally on that person.

If the certified mail to the spouse or domestic partner is not delivered, that person can not be found within the State and the certified mail is not delivered to any adult children, notice must be served personally on an adult child who can be found within the State.

If the certified mail to the spouse or domestic partner and adult children is not delivered, the spouse or domestic partner and all adult children can not be found within the State and the certified mail is not delivered to any parent, notice must be served personally on a parent who can be found within the State.

If no spouse, domestic partner, adult child or parent is served by certified mail or personally, notice to the closest adult relative required by subsection (a) must be served by certified mail, with restricted delivery and return receipt requested. If the certified mail to the adult relative is not delivered and the adult relative can be found within the State, notice must be served personally on the adult relative. If no adult relative is served by certified mail or personally, notice to an adult friend required by subsection (a) must be served by

certified mail, with restricted delivery and return receipt requested. If the certified mail to the adult friend is not delivered and the adult friend can be found within the State, notice must be served personally on the adult friend.

Notice required by subsection (a) to any person serving as a guardian or conservator or who has a person's care and custody must be served by certified mail, with restricted delivery and return receipt requested.

Except as otherwise provided in this section, notice must be given as prescribed by court rule under section 1-401.

[2003, c. 672, §10 (AMD) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1985, c. 440, §§3-5,13 (AMD). 1985, c. 656, §§1,2 (AMD). 2003, c. 672, §§9,10 (AMD).

§5-310. TEMPORARY GUARDIANS

(REPEALED)

SECTION HISTORY

1979, c. 540, §1 (NEW). 1983, c. 72, (AMD). 1983, c. 620, (AMD). 1993, c. 652, §2 (RP).

§5-310-A. TEMPORARY GUARDIANS

(a). When a person alleged to be incapacitated has no guardian and an emergency exists and no other person appears to have authority to act in the circumstances, upon appropriate petition, the court may exercise the power of a guardian or may enter an order, ex parte or otherwise, appointing a temporary guardian in order to prevent serious, immediate and irreparable harm to the health or financial interests of the person alleged to be incapacitated. A petition for temporary guardianship must be accompanied by an affidavit that sets forth the factual basis for the emergency and the specific powers requested by the proposed guardian. In the order and in the letters of temporary guardianship, the court shall specify the powers and duties of the temporary guardian, limiting the powers and duties to those necessary to address the emergency.

(1). Except as otherwise provided in this section, prior to filing a petition under this subsection the petitioner shall provide notice orally or in writing to the following:

- (i) The allegedly incapacitated person and the person's spouse, parents, adult children and any domestic partner known to the court;
- (ii) Any person who is serving as guardian or conservator or who has care and custody of the allegedly incapacitated person; and
- (iii) In case no other person is notified under subparagraph (i), at least one of the closest adult relatives of the allegedly incapacitated person or, if none, an adult friend, if any can be found.

[2005, c. 625, §1 (NEW) .]

(2). Notice under paragraph (1) must include the following information:

- (i) The temporary authority that the petitioner is requesting;
- (ii) The location and telephone number of the court in which the petition is being filed; and
- (iii) The name of the petitioner and the intended date of filing. [2005, c. 625, §1 (NEW) .]

(3). The petitioner shall state in the affidavit required under this subsection the date, time, location and method of providing the required notice under paragraph (1) and to whom the notice was provided. The court shall make a determination as to the adequacy of the method of providing notice and whether the petitioner complied with the notice requirements of this subsection. The requirements of section 5-309 do not apply to this section. [2005, c. 625, §1 (NEW) .]

(4). Notice is not required under this subsection in the following circumstances:

- (i) Giving notice will place the allegedly incapacitated person at substantial risk of abuse, neglect or exploitation;
- (ii) Notice, if provided, would not be effective; or
- (iii) Other good cause as determined by the court. [2005, c. 625, §1 (NEW) .]

(5). If, prior to filing the petition, the petitioner did not provide notice as required under this subsection, the petitioner must state in the affidavit the reasons for not providing notice. If notice has not been provided, the court shall make a determination as to the sufficiency of the reason for not providing notice before issuing a temporary order. [2005, c. 625, §1 (NEW) .]

[2005, c. 625, §1 (AMD) .]

(a-1). If the court takes action to exercise the powers of a guardian or to appoint a temporary guardian under subsection (a), then the court, within 2 days, excluding Saturdays, Sundays and legal holidays, of taking the action, shall appoint a visitor or a guardian ad litem to visit the allegedly incapacitated person and make a report to the court within 10 days of the appointment of the visitor or guardian ad litem. The visitor or guardian ad litem shall serve the allegedly incapacitated person with a copy of the order appointing the temporary guardian and shall explain the meaning and consequences of the appointment. The visitor or guardian ad litem shall inquire of the allegedly incapacitated person whether that person wishes to contest any aspect of the temporary guardianship or seek any limitation of the temporary guardian's powers. The visitor or guardian ad litem shall advise the allegedly incapacitated person of that person's right to contest the temporary guardianship by requesting a hearing under subsection (b) and shall advise the allegedly incapacitated person of that person's right to be represented in the proceeding by counsel of that person's own choice or by counsel appointed by the court. The visitor or guardian ad litem shall also interview the temporary guardian, except in cases where the court itself has taken action to exercise the powers of a temporary guardian. In the report to the court, the visitor or guardian ad litem shall inform the court that the allegedly incapacitated person has received a copy of the order appointing the temporary guardian. The visitor or guardian ad litem shall advise the court if circumstances indicate the allegedly incapacitated person wishes to contest any aspect of the temporary guardianship or seek a limitation of the temporary guardian's powers and whether the allegedly incapacitated person is already represented by counsel. The visitor or guardian ad litem shall also advise the court whether any issue exists with respect to whether the appointment of the temporary guardian is in the allegedly incapacitated person's best interest.

[2005, c. 625, §2 (AMD) .]

(b). If the court has exercised temporary guardianship powers or has issued an ex parte order under subsection (a), and if it comes to the court's attention, through the report of the visitor or guardian ad litem or otherwise, that the allegedly incapacitated person wishes to contest any aspect of the temporary guardianship or seek a limitation of the temporary guardian's powers, or that an issue exists with respect to whether the temporary guardianship is in the allegedly incapacitated person's best interest, the court shall hold an expedited hearing within 40 days of the entry of the ex parte order under subsection (a). The court may continue the expedited hearing if the petitioner and the attorney for the allegedly incapacitated person, or, if none, the visitor or the guardian ad litem, agree to such a continuance. The court may continue the hearing on its own motion due to circumstances beyond the control of the court and the parties, provided the hearing is held within 60 days of the signing of the ex parte order. If the appointment of a guardian is contested by the allegedly incapacitated person and the person is not already represented by an attorney, the court shall appoint counsel to represent the allegedly incapacitated person in the proceeding. The cost of the appointment of the

visitor, guardian ad litem or attorney must be paid from the estate of the allegedly incapacitated person if the court is satisfied that sufficient funds are available. At the hearing, the petitioner has the burden of showing, by a preponderance of the evidence, that temporary guardianship continues to be necessary to provide the person with continuing care, protection or support pending a final hearing. Notice of the expedited hearing must be served as provided in section 5-309, except that the notice must be given at least 5 days before the expedited hearing, and notice need not be served on any person whose address or present whereabouts is unknown and can not be ascertained by due diligence. The court may waive service of the expedited hearing on any person, other than the allegedly incapacitated person, upon a showing of good cause.

[1995, c. 203, §3 (AMD) .]

(c). At the expedited hearing, the court may render a judgment authorizing the temporary guardianship to continue for a period not to exceed 6 months from the date of entry of the ex parte order. The temporary guardianship terminates on the date specified in the order or, if no date is specified in the order, 6 months following the date of entry of the ex parte order or at any prior time if the court determines the circumstances leading to the order for temporary guardianship no longer exist or if a judgment has been entered following a hearing pursuant to section 5-303 with findings made pursuant to section 5-304.

[2009, c. 349, §6 (AMD) .]

(d). If the court denies the request for an ex parte order pursuant to subsection (a), the court may enter, in its discretion, an order for an expedited hearing pursuant to subsection (b). If the petitioner requests the entry of an order of temporary guardianship pursuant to subsection (a) without requesting an ex parte order, the court may hold an expedited hearing pursuant to subsection (b).

[1993, c. 652, §3 (NEW) .]

(e). If an appointed guardian is not effectively performing that guardian's duties and the court finds that the welfare of the incapacitated person requires immediate action, it may appoint, with or without notice, a temporary guardian for the incapacitated person for a specified period not to exceed 6 months.

[1993, c. 652, §3 (NEW) .]

(f). A temporary guardian is entitled to the care and custody of the ward and the authority of any permanent guardian previously appointed by the court is suspended as long as a temporary guardian has authority. A temporary guardian may not seek the involuntary hospitalization of this ward in any institution outside the State. A temporary guardian may be removed at any time. A temporary guardian shall make any report the court requires. In other respects, the provisions of this Code concerning guardians apply to temporary guardians.

[1993, c. 652, §3 (NEW) .]

(g). A petition for temporary guardianship may be brought before any judge if the judge of the county in which venue properly lies is unavailable. If a judge, other than the judge of the county in which venue properly lies, acts on a petition for temporary guardianship, that judge shall issue a written order and endorse upon it the date and time of the order. The judge shall then immediately transmit or cause to be transmitted that order to the register of the county in which venue properly lies. An order issued by a judge of a county, other than the county in which venue properly lies, is deemed to have been entered in the docket on the date and at the time endorsed upon it.

[1993, c. 652, §3 (NEW) .]

SECTION HISTORY

1993, c. 652, §3 (NEW). 1995, c. 203, §§2,3 (AMD). 1997, c. 35, §1 (AMD). 2005, c. 625, §§1,2 (AMD). 2009, c. 349, §6 (AMD).

§5-311. WHO MAY BE GUARDIAN; PRIORITIES

(a). Any competent person or a suitable institution may be appointed guardian of an incapacitated person, except as provided in subsection (c).

[1979, c. 540, §1 (NEW) .]

(b). Subject to a determination by the court of the best interests of the incapacitated person, persons who are not disqualified have priority for appointment as guardian in the following order:

- (1). The person or institution nominated in writing by the incapacitated person; [1979, c. 540, §1 (NEW) .]
- (2). The spouse of the incapacitated person; [1979, c. 540, §1 (NEW) .]
- (2-A). The domestic partner of the incapacitated person; [2003, c. 672, §11 (NEW) .]
- (3). An adult child of the incapacitated person; [1979, c. 540, §1 (NEW) .]
- (3-A). A person who served as guardian, permanency guardian or legal custodian of the incapacitated person when the incapacitated person was a child, if the person was actively serving in that capacity immediately before the incapacitated person's 18th birthday; [2007, c. 284, §1 (NEW) .]
- (4). A parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent; [1979, c. 540, §1 (NEW) .]
- (5). Any relative of the incapacitated person with whom the incapacitated person resided for more than 6 months prior to the filing of the petition; or [2007, c. 284, §2 (AMD) .]
- (6). A person nominated by the person who is caring for the incapacitated person or paying benefits to the incapacitated person. [2007, c. 284, §3 (AMD) .]

[2007, c. 284, §§1-3 (AMD) .]

(c). An owner, proprietor, administrator, employee or other person with a substantial financial interest in a facility or institution licensed under Title 22, sections 1817 and 7801 may not act as guardian of an incapacitated person who is a resident, as defined in Title 22, section 7852, subsection 13, unless the person requesting to be appointed guardian is one of the following:

- (1). The spouse of the incapacitated person; [1995, c. 51, §1 (NEW) .]
- (1-A). The domestic partner of the incapacitated person; [2003, c. 672, §12 (NEW) .]
- (2). An adult child of the incapacitated person; [1995, c. 51, §1 (NEW) .]
- (2-A). A person who served as guardian, permanency guardian or legal custodian of the incapacitated person when the incapacitated person was a child, if the person was actively serving in that capacity immediately before the incapacitated person's 18th birthday; [2007, c. 284, §4 (NEW) .]
- (3). A parent of the incapacitated person or a person nominated by the will of a deceased parent; or [1995, c. 51, §1 (NEW) .]
- (4). A relative of the incapacitated person with whom the incapacitated person has resided for more than 6 months prior to the filing of the petition for appointment. [1995, c. 51, §1 (NEW) .]

[2007, c. 284, §4 (AMD) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1985, c. 770, §1 (AMD). 1995, c. 51, §1 (AMD). 2001, c. 596, §B2 (AMD). 2001, c. 596, §B25 (AFF). 2003, c. 672, §§11,12 (AMD). 2007, c. 284, §§1-4 (AMD).

§5-312. GENERAL POWERS AND DUTIES OF GUARDIAN

(a). A guardian of an incapacitated person has the same powers, rights and duties respecting his ward that a parent has respecting his unemancipated minor child, except that a guardian is not legally obligated to provide from his own funds for the ward and is not liable to 3rd persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as modified by order of the court:

(1). To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, he is entitled to custody of the person of his ward and may establish the ward's place of abode within or without this State, and may place the ward in any hospital or other institution for care in the same manner as otherwise provided by law. [1979, c. 540, §1 (NEW).]

(2). If entitled to custody of his ward he shall make provision for the care, comfort and maintenance of his ward and, whenever appropriate, arrange for his training and education. Without regard to custodial rights of the ward's person, he shall take reasonable care of his ward's clothing, furniture, vehicles and other personal effects and commence protective proceedings if other property of his ward is in need of protection. [1979, c. 540, §1 (NEW).]

(3). A guardian may give or withhold consents or approvals related to medical or other professional care, counsel, treatment or service for the ward. Except as authorized by a court of competent jurisdiction, a guardian shall make a health-care decision in accordance with the ward's individual instructions, if any, and other wishes expressed while the ward had capacity to the extent known to the guardian. Otherwise, the guardian shall make the decision in accordance with the guardian's determination of the ward's best interest. In determining the ward's best interest, the guardian shall consider the ward's personal values to the extent known to the guardian. A decision of a guardian to withhold or withdraw life-sustaining treatment is effective without court approval unless the guardian's decision is made against the advice of the ward's primary physician and in the absence of instructions from the ward made while the ward had capacity. [1995, c. 378, Pt. B, §2 (AMD).]

(4). If no conservator for the estate of the ward has been appointed, he may:

(i) Institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his duty;

(ii) Receive money and tangible property deliverable to the ward and apply the money and property for support, care and education of the ward; but, he may not use funds from his ward's estate for room and board which he, his spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible. He must exercise care to conserve any excess for the ward's needs. [1979, c. 540, §1 (NEW).]

(5). A guardian is required to report the condition of his ward and of the estate which has been subject to his possession or control, as specified by the court at the time of the initial order or at the time of a subsequent order or as provided by court rule.

The court on its own motion, or on the petition of any interested person, may appoint a visitor to review the guardian's report and determine if appropriate provisions for the care, comfort and maintenance of his ward and for the care and protection of his ward's property have been made. The visitor shall report his findings to the court in writing. [1985, c. 440, §§6, 13 (AMD).]

(6). If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this code, and the guardian must account to the conservator for funds expended. [1979, c. 540, §1 (NEW).]

[1995, c. 378, Pt. B, §2 (AMD).]

(b). Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward, and is entitled to receive reasonable sums for his services and for room and board furnished to the ward as agreed upon between him and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to 3rd persons or institutions for the ward's care and maintenance.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1985, c. 440, §§6,13 (AMD). 1991, c. 719, §2 (AMD). 1995, c. 378, §B2 (AMD).

§5-313. PROCEEDINGS SUBSEQUENT TO APPOINTMENT; VENUE

(a). The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting and other proceedings relating to the guardianship.

[1979, c. 540, §1 (NEW) .]

(b). If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever may be in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW).

Part 4: PROTECTION OF PROPERTY OF PERSONS UNDER DISABILITY AND MINORS

§5-401. PROTECTIVE PROCEEDINGS

Upon petition and after notice and hearing in accordance with the provisions of this Part, the court may appoint a conservator, coconservator or make other protective order for cause as follows. [2003, c. 323, §2 (AMD) .]

(1). Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by his minority, or that funds are needed for his support and education and that protection is necessary or desirable to obtain or provide funds.

[1979, c. 540, §1 (NEW) .]

(2). Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines: by clear and convincing evidence that the person is unable to manage the person's property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; and by a preponderance of the evidence that the person has property that will be

wasted or dissipated unless proper management is provided or that funds are needed for the support, care and welfare of the person or those entitled to be supported by the person and that protection is necessary or desirable to obtain or provide funds. If the allegedly incapacitated person files voluntary written consent to the appointment of a conservator with the court or appears in court and consents to the appointment, unless the court finds the consent suspect, the court may appoint a conservator or coconservator as requested upon a finding by a preponderance of the evidence that the person is unable to manage the person's property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power or disappearance. For the purposes of this subsection, voluntary written consent is valid only if the consent was obtained by a visitor, a guardian ad litem or an attorney representing the allegedly incapacitated person and the allegedly incapacitated person gave the consent outside the presence of the person or persons seeking conservatorship.

[2009, c. 349, §7 (AMD) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 323, §2 (AMD). 2009, c. 349, §7 (AMD).

§5-402. PROTECTIVE PROCEEDINGS; JURISDICTION OF AFFAIRS OF PROTECTED PERSONS

After the service of notice in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the court in which the petition is filed has: [1979, c. 540, §1 (NEW) .]

(1). Exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;

[1979, c. 540, §1 (NEW) .]

(2). Exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this State shall be managed, expended or distributed to or for the use of the protected person or any of his dependents;

[1979, c. 540, §1 (NEW) .]

(3). Concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and his title to any property or claim.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§5-403. VENUE

Venue for proceedings under this Part is: [1979, c. 540, §1 (NEW) .]

(1). In the place in this State where the person to be protected resides whether or not a guardian has been appointed in another place; or

[1979, c. 540, §1 (NEW) .]

(2). If the person to be protected does not reside in this State, in any place where he has property.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§5-404. ORIGINAL PETITION FOR APPOINTMENT OR PROTECTIVE ORDER

(a). The person to be protected, any person who is interested in the estate, affairs or welfare of the person to be protected including the parent, guardian, custodian or domestic partner of the person to be protected or any person who would be adversely affected by lack of effective management of the property and affairs of the person to be protected may petition for the appointment of a conservator or for other appropriate protective order.

[2003, c. 672, §13 (AMD) .]

(b). The petition shall contain such information and be in such form as the Supreme Judicial Court shall by rule provide.

[1979, c. 540, §1 (NEW) .]

(c). A petition for a protective order made under oath may be used to initiate court consideration, accounting and remediation of the actions of any individual responsible for the management of the property or affairs of another. In the case of an emergency, the petition must be given priority scheduling by the court.

(1). The petition must include the following information and may include other information required by rule:

(i) Name, address and telephone number of the petitioner;

(ii) Name, address and telephone number of the principal;

(iii) Name, address and telephone number of the person with actual or apparent authority to manage the property or affairs of the principal;

(iv) Facts concerning the extent and nature of the principal's inability to manage the principal's property or affairs effectively and any facts supporting an allegation that an emergency exists;

(v) Facts concerning the extent and nature of the actual or apparent agent's lack of management of the principal's property or affairs. If applicable, facts describing how the petitioner has already been adversely affected by the lack of management of the principal's property or affairs; and

(vi) Names, addresses and relationships of all persons who are required to receive notice of the petition. [2005, c. 283, §1 (NEW) .]

(2). This subsection does not limit any other purpose for the use of a petition for a protective order or any other remedy available to the court. [2005, c. 283, §1 (NEW) .]

[2005, c. 283, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 672, §13 (AMD). 2005, c. 283, §1 (AMD).

§5-405. NOTICE

(a). On a petition for appointment of a conservator or other protective order or on a petition under section 5-416, the person to be protected or the protected person must be served personally with notice of the proceeding at least 14 days before the date of the hearing. Waiver by the person to be protected or the protected person is not effective unless he attends the hearing or, unless minority is the reason for the proceeding, waiver is confirmed in an interview with the visitor. The court may order that the petition and hearing notice be served by the visitor.

[1985, c. 656, §3 (RPR) .]

(a-1). The spouse or domestic partner and all adult children of the person to be protected or the protected person or, if none, the person's parents or closest adult relative or, if none, a friend must be given notice of the proceeding. Notice under this subsection must be served by certified mail, restricted delivery and return receipt requested, at least 14 days before the date of the hearing.

If the certified mail to the spouse or domestic partner is not delivered and that person can be found within the State, notice must be served personally on that person.

If the certified mail to the spouse or domestic partner is not delivered, that person can not be found within the State and the certified mail is not delivered to any adult children, notice must be served personally on an adult child who can be found within the State.

If notice is served on the person's parents or closest adult relative and the certified mail is not delivered, notice must be served personally on a parent or the adult relative if a parent or adult relative can be found within the State.

If notice is served on the person's friend and the certified mail is not delivered, notice must be served personally on the friend if the friend can be found within the State.

Except as otherwise provided in this subsection and subsection (a), notice must be given as prescribed by court rule under section 1-401.

[2003, c. 672, §14 (AMD) .]

(b). Notice of a petition for appointment of a conservator or other initial protective order, and of any subsequent hearing, must be given to any person who has filed a request for notice under section 5-406 and to interested persons and other persons as the court may direct. Except as otherwise provided in subsections (a) and (a-1), notice shall be given as prescribed by court rule under section 1-401.

[1985, c. 656, §5 (AMD) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1985, c. 440, §§7,13 (AMD). 1985, c. 656, §§3-5 (AMD). 2003, c. 672, §14 (AMD).

§5-406. PROTECTIVE PROCEEDINGS; REQUEST FOR NOTICE; INTERESTED PERSON

Any interested person who desires to receive notice of any filing, hearing or order in a protective proceeding may file a demand for notice with the court, shall thereupon have notice of such demand given to any conservator who has been appointed, and shall thereafter receive notice of every filing, notice or order to which the demand relates, in such manner and form as the Supreme Judicial Court shall by rule provide. Any governmental agency paying or planning to pay benefits to the person to be protected is an interested person in protective proceedings. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§5-407. PROCEDURE CONCERNING HEARING AND ORDER ON ORIGINAL PETITION

(a). Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the choice of the minor if 14 years of age or older. A lawyer appointed by the court to represent a minor has the powers and duties of a guardian ad litem.

[1979, c. 540, §1 (NEW) .]

(b). Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected is already represented by an attorney, the court shall appoint one or more of the following: a visitor; a guardian ad litem or a lawyer to represent the person to be protected in the proceedings. If it comes to the court's attention that the person to be protected wishes to contest any aspect of the proceeding or to seek any limitation of the proposed conservator's powers, the court shall appoint an attorney to represent the person to be protected. The cost of the appointment of the visitor, guardian ad litem or attorney must be paid from the estate of the person to be protected if the court is satisfied sufficient funds are available. If the alleged disability is physical illness or disability, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician acceptable to the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. If the alleged disability is mental illness or mental deficiency, the court may direct that the person to be protected be examined by a physician or by a licensed psychologist acceptable to the court; preferably the physician or psychologist shall not be connected with any institution in which the person is a patient or is detained. The physician or psychologist shall submit a report in writing to the court, providing diagnoses, a description of the person's actual mental and functional limitations and prognoses.

[1995, c. 203, §4 (AMD) .]

(b-1). If appointed, the visitor or guardian ad litem shall interview the person to be protected and the person who is seeking appointment as conservator. The visitor or guardian ad litem shall submit a report in writing to the court. The visitor or guardian ad litem shall explain the meaning and possible consequences of the requested appointment to the person to be protected and inquire if the person wishes to attend the hearing, to contest any aspect of the proceedings or to seek any limitation of the proposed conservator's powers. If the visitor or guardian ad litem determines that the person wants to contest any issue or seek a limited appointment and that the person is not already represented by an attorney, the visitor or guardian ad litem shall so indicate in the written report to the court. The person to be protected is entitled to be present at the hearing in person and to see and hear all evidence bearing upon the person's condition. The person to be protected is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the physician, the visitor and the guardian ad litem. The issue may be determined at a closed hearing if the person to be protected or the person's counsel so requests.

[1995, c. 203, §5 (AMD) .]

(b-2). The person nominated to serve as conservator shall file a plan which, where relevant and to the extent pertinent information is reasonably available to the nominee, shall include, but not be limited to, how the protected person's financial needs will be met, as well as a plan for the management of the protected person's estate.

[1985, c. 440, §§ 9, 13 (NEW) .]

(c). After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order.

[1979, c. 540, §1 (NEW) .]

(d). Except as otherwise provided by law, all reports and plans required by this section shall be submitted to the court and all parties of record at least 10 days before any hearing on the petition.

[1985, c. 440, §§ 10, 13 (NEW) .]

(e). When there has been an allegation of abuse, neglect or exploitation of an allegedly incapacitated person in a petition or other papers filed with the court, the court may hear the testimony of the allegedly incapacitated person in chambers with only the guardian ad litem and counsel present if the statements made are a matter of record.

[1989, c. 858, §3 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1983, c. 241, §2 (AMD). 1985, c. 440, §§8-10,13 (AMD). 1989, c. 858, §3 (AMD). 1993, c. 652, §§4,5 (AMD). 1995, c. 203, §§4,5 (AMD).

§5-408. PERMISSIBLE COURT ORDERS

The court shall exercise the authority conferred in Parts 4 and 6 to encourage the development of maximum self reliance and independence of the protected person and make protective orders only to the extent necessitated by the protected person's actual mental and adaptive limitations and other conditions warranting the procedure. [1985, c. 440, §§11, 13 (NEW).]

The court has the following powers which may be exercised directly or through a conservator in respect to the estate and affairs of protected persons; [1979, c. 540, §1 (NEW).]

(1). While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for the person's benefit or the benefit of the person's dependents, in accordance with the procedures set forth in section 5-408-A.

[1993, c. 652, §6 (AMD) .]

(2). After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, his family and members of his household.

[1979, c. 540, §1 (NEW) .]

(3). After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of his household, all the powers over his estate and affairs which he could exercise if present and not under disability, except the power to make a will. These powers include, but are not limited to power to make gifts, to convey or release his contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, to exercise or release his powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment, to enter into contracts, to create revocable or irrevocable trusts of property of the estate which may extend beyond his disability or life, to exercise options of the disabled person to purchase securities or

other property, to exercise his rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value, to exercise his right to an elective share in the estate of his deceased spouse and to renounce any interest by testate or intestate succession or by inter vivos transfer.

[1979, c. 540, §1 (NEW) .]

(4). The court may exercise or direct the exercise of, its authority to exercise or release powers of appointment of which the protected person is donee, to renounce interests, to make gifts in trust or otherwise exceeding 20% of any year's income of the estate or to change beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing, that it is in the best interests of the protected person, and that he either is incapable of consenting or has consented to the proposed exercise of power.

[1979, c. 540, §1 (NEW) .]

(5). An order made pursuant to this section determining that a basis for appointment of a conservator or other protective order exists, has no effect on the capacity of the protected person.

[1979, c. 540, §1 (NEW) .]

(6). The court may authorize a gift or other transfer for less than fair market value from the protected person's estate if the court finds:

(a). That the remaining estate assets of the protected person are sufficient for the protected person's care and maintenance for the next 60 months, including due provision for the protected person's established standard of living and for the support of any persons the protected person is legally obligated to support and any dependents of the protected person; and [2011, c. 155, §1 (AMD) .]

(b). That the gift or other transfer will not hasten the date of eligibility for MaineCare coverage of the protected person's long-term care expenses during the next 60 months. [2011, c. 155, §1 (AMD) .]

If the gift or other transfer is being made to the protected person's spouse or blind or disabled child or to a trust established pursuant to 42 United States Code, Section 1396p(d)(4), or is otherwise specifically allowed without a transfer penalty by law governing the federal Medicaid program under 42 United States Code, the court may authorize the gift or other transfer without making the findings under paragraphs (a) and (b).

[2011, c. 155, §1 (AMD) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1985, c. 440, §§11,13 (AMD). 1993, c. 652, §6 (AMD). 2005, c. 12, §DDD4 (AMD). 2005, c. 12, §DDD17 (AFF). 2011, c. 155, §1 (AMD).

§5-408-A. TEMPORARY CONSERVATOR

(a). When a person is alleged to be in need of protection and an emergency exists and no other person appears to have authority to act in the circumstances, upon appropriate petition, the court may exercise the power of a conservator or may enter an order, ex parte or otherwise, appointing a temporary conservator in order to prevent serious, immediate and irreparable harm to the health or financial interests of the person alleged to be in need of protection and to preserve and apply the property of the person to be protected as may be required for that person's benefit or the benefit of that person's dependents. The petition must be accompanied by an affidavit that sets forth the factual basis for the emergency and the specific powers requested by the proposed conservator. In the order and in the letters of temporary conservatorship, the court shall specify the powers and duties of the temporary conservator, limiting the powers and duties to those necessary to address the emergency.

(1). Except as otherwise provided in this section, prior to filing a petition under this subsection the petitioner shall provide notice orally or in writing to the following:

- (i) The person alleged to be in need of protection and the person's spouse, parents, adult children and any domestic partner known to the court;
- (ii) Any person who is serving as guardian or conservator or who has care and custody of the person alleged to be in need of protection; and
- (iii) In case no other person is notified under subparagraph (i), at least one of the closest adult relatives of the person alleged to be in need of protection or, if none, an adult friend, if any can be found. [2005, c. 625, §3 (NEW) .]

(2). Notice under paragraph (1) must include the following information:

- (i) The temporary authority that the petitioner is requesting;
- (ii) The location and telephone number of the court in which the petition is being filed; and
- (iii) The name of the petitioner and the intended date of filing. [2005, c. 625, §3 (NEW) .]

(3). The petitioner shall state in the affidavit required under this subsection the date, time, location and method of providing the required notice under paragraph (1) and to whom the notice was provided. The court shall make a determination as to the adequacy of the method of providing notice and whether the petitioner complied with the notice requirements of this subsection. The requirements of section 5-405 do not apply to this section. [2005, c. 625, §3 (NEW) .]

(4). Notice is not required under this subsection in the following circumstances:

- (i) Giving notice will place the person alleged to be in need of protection at substantial risk of abuse, neglect or exploitation;
- (ii) Notice, if provided, would not be effective; or
- (iii) Other good cause as determined by the court. [2005, c. 625, §3 (NEW) .]

(5). If, prior to filing the petition, the petitioner did not provide notice as required under this subsection, the petitioner must state in the affidavit the reasons for not providing notice. If notice has not been provided, the court shall make a determination as to the sufficiency of the reason for not providing notice before issuing a temporary order. [2005, c. 625, §3 (NEW) .]

[2005, c. 625, §3 (AMD) .]

(a-1). If the court takes action to exercise the powers of a conservator or to appoint a temporary conservator under subsection (a), then the court, within 2 days, excluding Saturdays, Sundays and legal holidays, of taking the action, shall appoint a visitor or a guardian ad litem to visit the protected person and make a report to the court within 10 days of the appointment of the visitor or guardian ad litem. The visitor or guardian ad litem shall serve the protected person with a copy of the order appointing the temporary conservator and shall explain the meaning and consequences of the appointment. The visitor or guardian ad litem shall inquire of the protected person whether that person wishes to contest any aspect of the temporary conservatorship or seek any limitation of the temporary conservator's powers. The visitor or guardian ad litem shall advise the protected person of that person's right to contest the temporary conservatorship by requesting an expedited hearing under subsection (b) and shall advise the protected person of that person's right to be represented by counsel of that person's own choice or by counsel appointed by the court. The visitor or guardian ad litem shall also interview the temporary conservator, except in cases where the court itself has taken action to exercise the powers of a temporary conservator. In the report to the court, the visitor or guardian ad litem shall inform the court that the protected person has received a copy of the order appointing the temporary conservator and shall advise the court if circumstances indicate that the protected person wishes to contest any aspect of the temporary conservatorship or seek a limitation of the temporary conservator's

powers and whether the protected person is already represented by counsel. The visitor or guardian ad litem shall also advise the court whether any issue exists with respect to whether the appointment of the temporary conservator is in the protected person's best interest.

[2005, c. 625, §4 (AMD) .]

(b). If the court has exercised temporary guardianship powers or has issued an ex parte order under subsection (a), and if it comes to the court's attention, through the report of the visitor or guardian ad litem or otherwise, that the protected person wishes to contest any aspect of the temporary conservatorship or to seek a limitation of the temporary conservator's powers, or if it appears that there is an issue with respect to whether the temporary conservatorship is in the protected person's best interest, the court shall hold an expedited hearing within 40 days of the signing of the ex parte order under subsection (a). The court may continue the expedited hearing if the petitioner and the attorney for the protected person, or, if none, the visitor or guardian ad litem, agree to such a continuance. The court may continue the hearing on its own motion due to circumstances beyond the control of the court and the parties, provided the hearing is held within 60 days of the signing of the ex parte order. If the appointment of a conservator is contested by the protected person and the person is not already represented by an attorney, the court shall appoint counsel to represent the person in the proceeding. The cost of the appointment of the visitor, guardian ad litem or attorney must be paid from the estate of the protected person if the court is satisfied that sufficient funds are available. At that hearing, the petitioner has the burden of showing, by a preponderance of the evidence, that temporary conservatorship continues to be necessary to protect and preserve the person's estate pending final hearing. Notice of the expedited hearing must be served as provided in section 5-405, except that the notice must be given at least 5 days before the expedited hearing, and notice need not be served on any person whose address or present whereabouts is unknown and can not be ascertained by due diligence. The court may waive service of the expedited hearing on any person, other than the person to be protected, upon a showing of good cause.

[1995, c. 203, §7 (AMD) .]

(c). At the expedited hearing, the court may render a judgment authorizing the temporary conservatorship to continue for a period not to exceed 6 months from the date of entry of the ex parte order. The temporary conservatorship terminates on the date specified in the order or, if no date is specified in the order, 6 months following the date of entry of the ex parte order, or at any prior time if the court determines the circumstances leading to the order for temporary conservatorship no longer exist or if a judgment has been entered following a hearing pursuant to section 5-407 with findings made pursuant to section 5-401.

[2009, c. 349, §8 (AMD) .]

(d). If the court denies the request for an ex parte order pursuant to subsection (a), the court may enter, in its discretion, an order for an expedited hearing pursuant to subsection (b). If the petitioner requests the entry of an order of temporary conservatorship pursuant to subsection (a) without requesting an ex parte order, the court may hold an expedited hearing pursuant to subsection (b).

[1993, c. 652, §7 (NEW) .]

(e). If an appointed conservator is not effectively performing that conservator's duties and the court finds that an emergency exists that requires the appointment of a temporary successor conservator in order to preserve and apply the property of the protected person for the protected person's benefit or the benefit of the protected person's dependents, it may appoint, with or without notice, a temporary successor conservator for the protected person for a specified period not to exceed 6 months.

[1993, c. 652, §7 (NEW) .]

(f). A temporary conservator has all the powers of a permanent conservator provided in this code, unless expressly limited by the court. A temporary successor conservator has the same powers as the previously appointed conservator, unless the court indicates otherwise in the letters of appointment. The

authority of a previously appointed conservator is suspended as long as the temporary conservator has authority. A temporary conservator may be removed at any time. A temporary conservator shall account to the court at the termination of the temporary conservatorship.

[1993, c. 652, §7 (NEW) .]

(g). A petition for temporary conservatorship may be brought before any judge if the judge of the county in which venue properly lies is unavailable. If a judge other than the judge of the county in which venue properly lies acts on a petition for temporary conservatorship, that judge shall issue a written order and endorse upon it the date and time of the order. The judge shall then immediately transmit or cause to be transmitted that order to the register of the county in which venue properly lies. An order issued by a judge of a county other than the county in which venue properly lies is deemed to have been entered in the docket on the date and at the time endorsed upon it.

[1995, c. 203, §8 (NEW) .]

SECTION HISTORY

1993, c. 652, §7 (NEW). 1995, c. 203, §§6-8 (AMD). 1997, c. 35, §2 (AMD). 2005, c. 625, §§3,4 (AMD). 2009, c. 349, §8 (AMD).

§5-409. PROTECTIVE ARRANGEMENTS AND SINGLE TRANSACTIONS AUTHORIZED

(a). If it is established in a proper proceeding that a basis exists as described in section 5-401 for affecting the property and affairs of a person the court, without appointing a conservator, may authorize, direct or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include, but are not limited to, payment, delivery, deposit or retention of funds or property, sale, mortgage, lease or other transfer of property, entry into an annuity contract, a contract for life care, a deposit contract, a contract for training and education, or addition to or establishment of a suitable trust.

[1979, c. 540, §1 (NEW) .]

(b). If it has been established in a proper proceeding that a basis exists as described in section 5-401 for affecting the property and affairs of a person, the court, without appointing a conservator, may authorize, direct or ratify any contract, trust or other transaction relating to the protected person's financial affairs or involving the protected person's estate if the court determines that the transaction is in the best interests of the protected person, subject to the provisions of subsection (d).

[2005, c. 12, Pt. DDD, §5 (AMD); 2005, c. 12, Pt. DDD, §17 (AFF) .]

(c). Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of creditors and dependents of the protected person and, in view of his disability, whether the protected person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who shall have the authority conferred by the order and serve until discharged by order after report to the court of all matters done pursuant to the order of appointment.

[1979, c. 540, §1 (NEW) .]

(d). The court may authorize a gift or other transfer for less than fair market value from the protected person's estate if the court finds:

(1). That the remaining estate assets of the protected person are sufficient for the protected person's care and maintenance for the next 60 months, including due provision for the protected person's established standard of living and for the support of any persons the protected person is legally obligated to support and any dependents of the protected person; and [2011, c. 155, §2 (AMD) .]

(2). That the gift or other transfer will not hasten the date of eligibility for MaineCare coverage of the protected person's long-term care expenses during the next 60 months. [2011, c. 155, §2 (AMD) .]

If the gift or other transfer is being made to the protected person's spouse or blind or disabled child or to a trust established pursuant to 42 United States Code, Section 1396p(d)(4), or is otherwise specifically allowed without a transfer penalty by law governing the federal Medicaid program under 42 United States Code, the court may authorize the gift or other transfer without making the findings under paragraphs (1) and (2).

[2011, c. 155, §2 (AMD) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 2005, c. 12, §§DDD5,6 (AMD). 2005, c. 12, §DDD17 (AFF). 2011, c. 155, §2 (AMD).

§5-410. WHO MAY BE APPOINTED CONSERVATOR; PRIORITIES

(a). The court may appoint an individual, or a corporation with general power to serve as trustee, as conservator of the estate of a protected person. The following are entitled to consideration for appointment in the order listed:

(1). A conservator, guardian of property or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides; [1979, c. 540, §1 (NEW) .]

(2). An individual or corporation nominated by the protected person if he is 14 or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice; [1979, c. 540, §1 (NEW) .]

(3). The spouse of the protected person; [1979, c. 540, §1 (NEW) .]

(3-A). The domestic partner of the protected person; [2003, c. 672, §15 (NEW) .]

(4). An adult child of the protected person; [1979, c. 540, §1 (NEW) .]

(5). A parent of the protected person, or a person nominated by the will of a deceased parent; [1979, c. 540, §1 (NEW) .]

(6). Any relative of the protected person with whom he has resided for more than 6 months prior to the filing of the petition; [1979, c. 540, §1 (NEW) .]

(7). A person nominated by the person who is caring for him or paying benefits to him. [1979, c. 540, §1 (NEW) .]

[2003, c. 672, §15 (AMD) .]

(b). A person in subsection (a), paragraphs (1), (3), (4), (5), or (6) may nominate in writing a person to serve in his stead. With respect to persons having equal priority, the court is to select the one who is best qualified of those willing to serve. The court, for good cause, may pass over a person having priority and appoint a person having less priority or no priority.

[1979, c. 540, §1 (NEW) .]

(c). A facility or institution licensed under Title 22, sections 1817 and 7801, or an owner, proprietor, administrator, employee or other person with substantial financial interest in the facility or institution, may not act as conservator of the estate of a resident of that facility or institution, unless he is entitled to appointment under subsection (a), paragraph (3), (4), (5) or (6).

[1985, c. 770, §2 (AMD) .]

(d). When appointed by the court, the conservator shall inform the court as to the conservator's residence. If the residence changes, the conservator shall inform the court of that change. If the conservator is a corporation, the corporate offices are considered the conservator's residence for the purposes of this section.

[1995, c. 291, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1979, c. 690, §20 (AMD). 1985, c. 770, §2 (AMD). 1995, c. 291, §1 (AMD). 2003, c. 672, §15 (AMD).

§5-411. BOND

The following provisions govern bonds for conservators. [1997, c. 453, §2 (RPR) .]

(a). The Probate Court shall require a conservator of an estate of \$25,000 or more to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law, with sureties as it specifies, unless the court makes a specific finding as to why a bond should not be required. With respect to estates of less than \$25,000, the court may in its discretion require a bond or other surety. In making a finding as to why a bond is not required, the court shall consider the person's creditworthiness, financial solvency or past financial management.

[1997, c. 453, §2 (NEW) .]

(b). A conservator who moves out of State while serving as conservator shall notify the Probate Court regarding the change of residence. The court may require a conservator who moves or locates out of State while serving as conservator to furnish a bond at that time. Unless otherwise directed, the bond must be in the amount of the aggregate capital value of the property of the estate in the conservator's control plus one year's estimated income minus the value of securities deposited under arrangements requiring an order of the court for their removal and the value of any land that the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization. In lieu of sureties on a bond, the court may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land.

[1997, c. 453, §2 (NEW) .]

(c). The following persons wishing to serve as conservators are exempt from the bonding requirements of this section:

(1). Spouses; [1997, c. 453, §2 (NEW) .]

(2). Financial institutions authorized to do business in this State as defined in Title 9-B, section 131, subsection 17-A, or their employees; and [2009, c. 415, Pt. B, §6 (AMD) .]

(3). Persons who are already bonded in their course of business if the bond is sufficient to cover the duties of conservator. [1997, c. 453, §2 (NEW) .]

[2009, c. 415, Pt. B, §6 (AMD) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1995, c. 291, §2 (AMD). 1997, c. 453, §2 (RPR). 2009, c. 415, Pt. B, §6 (AMD).

§5-412. TERMS AND REQUIREMENTS OF BONDS

(a). The following requirements and provisions apply to any bond required under section 5-411:

(1). Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the conservator and with each other; [1979, c. 540, §1 (NEW).]

(2). By executing an approved bond of a conservator, the surety consents to the jurisdiction of the court which issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party defendant. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner; [1979, c. 540, §1 (NEW).]

(3). On petition of a successor conservator or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the conservator; [1979, c. 540, §1 (NEW).]

(4). The bond of the conservator is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted. [1979, c. 540, §1 (NEW).]

[1979, c. 540, §1 (NEW) .]

(b). No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§5-413. ACCEPTANCE OF APPOINTMENT; CONSENT TO JURISDICTION

By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the conservator, or mailed to him by registered or certified mail at his address as listed in the petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§5-414. COMPENSATION AND EXPENSES

If not otherwise compensated for services rendered, any visitor, lawyer, physician, conservator or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate. The factors set forth in section 3-721, subsection (b) should be considered as guides in determining the reasonableness of compensation under this section. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§5-415. DEATH, RESIGNATION OR REMOVAL OF CONSERVATOR

The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. After his death, resignation or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of his predecessor. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§5-416. PETITIONS FOR ORDERS SUBSEQUENT TO APPOINTMENT

(a). Any person interested in the welfare of a person for whom a conservator has been appointed may file a petition in the appointing court for an order (1) requiring bond or security or additional bond or security, or reducing bond, (2) requiring an accounting for the administration of the trust, (3) directing distribution, (4) removing the conservator and appointing a temporary or successor conservator, or (5) granting other appropriate relief.

[1979, c. 540, §1 (NEW) .]

(b). A conservator may petition the appointing court for instructions concerning his fiduciary responsibility.

[1979, c. 540, §1 (NEW) .]

(c). Upon notice and hearing, the court may give appropriate instructions or make any appropriate order.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§5-417. GENERAL DUTY OF CONSERVATOR

In the exercise of the conservator's powers, a conservator is to act as a fiduciary and shall observe the standards of care applicable to trustees as described by Title 18-B, sections 802 to 807 and chapter 9. [2003, c. 618, Pt. B, §7 (AMD); 2003, c. 618, Pt. B, §20 (AFF).]

SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 618, §B7 (AMD). 2003, c. 618, §B20 (AFF).

§5-418. INVENTORY AND RECORDS

(a). Within 90 days following a conservator's appointment, the conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with the conservator's oath or affirmation that it is complete and accurate so far as the conservator is informed. The conservator shall provide a copy of the completed inventory to the protected person if the person can be located, has attained 14 years of age and has sufficient mental capacity to understand these matters, and to any parent or guardian with whom the protected person resides.

[2001, c. 280, §1 (NEW) .]

(b). A conservator shall keep suitable records of the conservator's administration and exhibit the same on request of any interested person.

[2001, c. 280, §1 (NEW) .]

(c). If a conservator fails without good cause to file an inventory, the court may require the conservator or the conservator's surety to pay to the protected person's estate a minimum of \$100 and a maximum of the amount the court determines is just to compensate the estate for any damage resulting from the failure to file the inventory. The payments required by this subsection are in addition to any other award or remedy available at law or in equity for fiduciary misconduct of the conservator.

[2001, c. 280, §1 (NEW) .]

(d). If any property not included in the original inventory comes to the knowledge of the conservator or if the conservator or court learns that the value or description indicated in the original inventory for any item is erroneous or misleading, the conservator shall make a supplementary inventory or appraisal showing the market value of the new item or the revised market value or descriptions and the appraisers or other data relied upon, if any, and file it with the court and furnish copies to persons interested in the new information.

[2003, c. 377, §1 (NEW) .]

(e). When an inventory has not been filed under this section and an interested party makes a prima facie case that property that should have been inventoried is now missing, the conservator has the burden of proving by a preponderance of the evidence that the specific property would properly be excluded from the inventory.

[2003, c. 377, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 2001, c. 280, §1 (RPR). 2003, c. 377, §1 (NEW).

§5-419. ACCOUNTS

(a). Every conservator shall account to the court for the administration of the trust as specified by the court at the time of the initial order or at the time of a subsequent order or as provided by court rule and upon resignation or removal. Notwithstanding any other duty to render an accounting, a private conservator appointed after January 1, 2008 shall file an annual account with the court for approval. The court, for good cause shown by a conservator who is the spouse or domestic partner of the protected person, may waive or modify the duty to file an annual account. The annual account must be approved by the court before the conservator's obligation to file the annual account ends.

Prior to the termination of the protected person's minority, the conservator shall account to the court and the protected person. On termination of the protected person's minority or disability, a conservator shall file a final accounting with the court and that accounting must be approved by the court before the conservator's obligation to account ends. The conservator shall provide a copy of the final accounting to the former protected person or that person's personal representative at the time it is filed with the court.

[2007, c. 308, §1 (AMD) .]

(b). Subject to appeal or vacation within the time permitted, an order, made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates as to the conservator's liabilities concerning the matters considered in connection therewith; and an order, made upon notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or the

protected person's successors relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical check of the estate in the conservator's control, to be made in any manner the court may specify.

[2001, c. 280, §2 (AMD) .]

(c). The court may appoint a visitor to review the conservator's accounts and determine if appropriate provision for the use, care and protection of the protected person's property has been made. The visitor shall report the findings to the court in writing.

[2001, c. 280, §2 (AMD) .]

(d). If the conservator fails without good cause to file the accounting required by the court, the court may require the conservator or the conservator's surety to pay to the protected person's estate a minimum of \$100 and a maximum of the amount the court determines is just to compensate the estate for any damage resulting from the failure to file the accounting. The payments required by this subsection are in addition to any other award or remedy available at law or in equity for fiduciary misconduct of the conservator.

[2001, c. 280, §2 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1985, c. 440, §§12,13 (RPR). 1991, c. 641, §4 (AMD). 1995, c. 462, §A39 (AMD). 2001, c. 280, §2 (AMD). 2007, c. 308, §1 (AMD).

§5-420. CONSERVATORS; TITLE BY APPOINTMENT

The appointment of a conservator vests in him title as trustee to all property of the protected person, presently held or thereafter acquired, including title to any property theretofore held for the protected person by custodians or attorneys in fact. The appointment of a conservator is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will or trust instrument, imposing restrictions upon or penalties for transfer or alienation by the protected person of his rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a conservator. [1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§5-421. RECORDING OF CONSERVATOR'S LETTERS

Letters of conservatorship are evidence of transfer of all assets of a protected person to the conservator. An order terminating a conservatorship is evidence of transfer of all assets of the estate from the conservator to the protected person, or his successors. Subject to the requirements of general statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship, and orders terminating conservatorships, may be filed or recorded to give record notice of title as between the conservator and the protected person. [1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§5-422. SALE, ENCUMBRANCE OR TRANSACTION INVOLVING CONFLICT OF INTEREST; VOIDABLE; EXCEPTIONS

Any sale or encumbrance to a conservator, his spouse, agent or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest is voidable unless the transaction is approved by the court after notice to interested persons and others as directed by the court. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§5-423. PERSONS DEALING WITH CONSERVATORS; PROTECTION

A person who in good faith either assists a conservator or deals with him for value in any transaction other than those requiring a court order as provided in section 5-408, is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators which are endorsed on letters as provided in section 5-426 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§5-424. POWERS OF CONSERVATOR IN ADMINISTRATION

(a). A conservator has all of the powers conferred herein and any additional powers conferred by law on trustees in this State. In addition, a conservator of the estate of an unmarried minor, as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in section 5-209 until the minor attains the age of 18 or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by Part 2.

[1979, c. 540, §1 (NEW) .]

(b). A conservator has power without court authorization or confirmation, to invest and reinvest funds of the estate as would a trustee.

[1979, c. 540, §1 (NEW) .]

(b-1). A conservator may remove items of tangible property that are assets of the estate to a location out of this State only with court authorization.

[1995, c. 291, §3 (NEW) .]

(c). A conservator, acting reasonably in efforts to accomplish the purpose for which he was appointed, may act without court authorization or confirmation, to

(1). Collect, hold and retain assets of the estate including land in another state, until, in his judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which he is personally interested; [1979, c. 540, §1 (NEW).]

(2). Receive additions to the estate; [1979, c. 540, §1 (NEW).]

- (3). Continue or participate in the operation of any business or other enterprise; [1979, c. 540, §1 (NEW).]
- (4). Acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest; [1979, c. 540, §1 (NEW).]
- (5). Invest and reinvest estate assets in accordance with subsection (b); [1979, c. 540, §1 (NEW).]
- (6). Deposit estate funds in a bank including a bank operated by the conservator; [1979, c. 540, §1 (NEW).]
- (7). Acquire or dispose of an estate asset including land in another state for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset; [1979, c. 540, §1 (NEW).]
- (8). Make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings; [1979, c. 540, §1 (NEW).]
- (9). Subdivide, develop, or dedicate land to public use; to make or obtain the vacation of plats and adjust boundaries; to adjust differences in valuation on exchange or to partition by giving or receiving considerations; and to dedicate easements to public use without consideration; [1979, c. 540, §1 (NEW).]
- (10). Enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship; [1979, c. 540, §1 (NEW).]
- (11). Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement; [1979, c. 540, §1 (NEW).]
- (12). Grant an option involving disposition of an estate asset, to take an option for the acquisition of any asset; [1979, c. 540, §1 (NEW).]
- (13). Vote a security, in person or by general or limited proxy; [1979, c. 540, §1 (NEW).]
- (14). Pay calls, assessments, and any other sums chargeable or accruing against or on account of securities; [1979, c. 540, §1 (NEW).]
- (15). Sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise; [1979, c. 540, §1 (NEW).]
- (16). Hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held; [1979, c. 540, §1 (NEW).]
- (17). Insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons; [1979, c. 540, §1 (NEW).]
- (18). Borrow money to be repaid from estate assets or otherwise; to advance money for the protection of the estate or the protected person, and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets and the conservator has a lien on the estate as against the protected person for advances so made; [1979, c. 540, §1 (NEW).]
- (19). Pay or contest any claim; to settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible; [1979, c. 540, §1 (NEW).]
- (20). Pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration and protection of the estate; [1979, c. 540, §1 (NEW).]

(21). Allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties; [1979, c. 540, §1 (NEW).]

(22). Pay any sum distributable to a protected person or his dependent without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to his guardian or if none, to a relative or other person with custody of his person; [1979, c. 540, §1 (NEW).]

(23). Employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator to advise or assist him in the performance of his administrative duties; to act upon their recommendation without independent investigation; and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary; [1979, c. 540, §1 (NEW).]

(24). Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties; and [1979, c. 540, §1 (NEW).]

(25). Execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator. [1979, c. 540, §1 (NEW).]

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1995, c. 291, §3 (AMD).

§5-425. DISTRIBUTIVE DUTIES AND POWERS OF CONSERVATOR

(a). A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care or benefit of the protected person and his dependents in accordance with the following principles:

(1). The conservator is to consider recommendations relating to the appropriate standard of support, education and benefit for the protected person made by a parent or guardian, if any. He may not be surcharged for sums paid to persons or organizations actually furnishing support, education or care to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless he knows that the parent or guardian is deriving personal financial benefit therefrom, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person. [1979, c. 540, §1 (NEW).]

(2). The conservator is to expend or distribute sums reasonably necessary for the support, education, care or benefit of the protected person with due regard to (i) the size of the estate, the probable duration of the conservatorship and the likelihood that the protected person, at some future time, may be fully able to manage his affairs and the estate which has been conserved for him; (ii) the accustomed standard of living of the protected person and members of his household; (iii) other funds or sources used for the support of the protected person. [1979, c. 540, §1 (NEW).]

(3). The conservator may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household who are unable to support themselves, and who are in need of support. [1979, c. 540, §1 (NEW).]

(4). Funds expended under this subsection may be paid by the conservator to any person, including the protected person to reimburse for expenditures which the conservator might have made, or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances. [1979, c. 540, §1 (NEW).]

[1979, c. 540, §1 (NEW) .]

(b). If the estate is ample to provide for the purposes implicit in the distributions authorized by the preceding subsections, a conservator for a protected person other than a minor has power to make gifts to charity and other objects as the protected person might have been expected to make, in amounts that do not exceed in total for any year 20% of the income from the estate, subject to the provisions of subsection (b-1).

[2005, c. 12, Pt. DDD, §7 (AMD); 2005, c. 12, Pt. DDD, §17 (AFF) .]

(b-1). The court may authorize a gift or other transfer for less than fair market value from the protected person's estate if the court finds:

(1). That the remaining estate assets of the protected person are sufficient for the protected person's care and maintenance for the next 60 months, including due provision for the protected person's established standard of living and for the support of any persons the protected person is legally obligated to support and any dependents of the protected person; and [2011, c. 155, §3 (AMD) .]

(2). That the gift or other transfer will not hasten the date of eligibility for MaineCare coverage of the protected person's long-term care expenses during the next 60 months. [2011, c. 155, §3 (AMD) .]

If the gift or other transfer is being made to the protected person's spouse or blind or disabled child or to a trust established pursuant to 42 United States Code, Section 1396p(d)(4), or is otherwise specifically allowed without a transfer penalty by law governing the federal Medicaid program under 42 United States Code, the court may authorize the gift or other transfer without making the findings under paragraphs (1) and (2).

[2011, c. 155, §3 (AMD) .]

(c). When a minor who has not been adjudged disabled under section 5-401, paragraph (2) attains his majority, his conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

[1979, c. 540, §1 (NEW) .]

(d). When the conservator is satisfied that a protected person's disability, other than minority, has ceased, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

[1979, c. 540, §1 (NEW) .]

(e). If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into his possession, inform the executor or a beneficiary named therein that he has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto. If after 40 days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative so that he may proceed to administer and distribute the decedent's estate without additional or further appointment. Upon application for an order granting the powers of a personal representative to a conservator, after notice to any person demanding notice under section 3-204 and to any person nominated executor in any will of which the applicant is aware, the court may order the conferral of the power upon determining that there is no objection, and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section shall have the effect of an order of

appointment of a personal representative as provided in section 3-308 and Parts 6 through 10 of Article III except that estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 2005, c. 12, §§DDD7,8 (AMD). 2005, c. 12, §DDD17 (AFF). 2011, c. 155, §3 (AMD).

§5-426. ENLARGEMENT OR LIMITATION OF POWERS OF CONSERVATOR

Subject to the restrictions in section 5-408, paragraph (4), the court may confer on a conservator at the time of appointment or later, in addition to the powers conferred on him by sections 5-424 and 5-425, any power which the court itself could exercise under sections 5-408, paragraph (2) and 5-408, paragraph (3). The court may, at the time of appointment or later, limit the powers of a conservator otherwise conferred by sections 5-424 and 5-425, or previously conferred by the court, and may at any time relieve him of any limitation. If the court limits any power conferred on the conservator by section 5-424 or section 5-425, the limitation shall be endorsed upon his letters of appointment. [1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW) .

§5-427. PRESERVATION OF ESTATE PLAN

In investing the estate, and in selecting assets of the estate for distribution under section 5-425, subsections (a) and (b), in utilizing powers of revocation or withdrawal available for the support of the protected person, and exercisable by the conservator or the court, the conservator and the court should take into account any known estate plan of the protected person, including his will, any revocable trust of which he is settlor, and any contract, transfer or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his death to another or others which he may have originated. The conservator may examine the will of the protected person. [1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW) .

§5-428. CLAIMS AGAINST PROTECTED PERSON; ENFORCEMENT

(a). A conservator must pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. A claim may be presented by either of the following methods: (1) the claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant and the amount claimed; (2) the claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of court and deliver or mail a copy of the statement to the conservator. A claim is deemed presented on the first to occur of receipt of the written statement of claim by the conservator, or the filing of the claim with the court. A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant within 60 days after its presentation. The presentation of a claim tolls any statute of limitation relating to the claim until thirty days after its disallowance.

[1979, c. 540, §1 (NEW) .]

(b). A claimant whose claim has not been paid may petition the court for determination of his claim at any time before it is barred by the applicable statute of limitation, and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party must give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate.

[1979, c. 540, §1 (NEW) .]

(c). If it appears that the estate in conservatorship is likely to be exhausted before all existing claims are paid, preference is to be given to prior claims for the care, maintenance and education of the protected person or his dependents and existing claims for expenses of administration.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§5-429. INDIVIDUAL LIABILITY OF CONSERVATOR

(a). Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

[1979, c. 540, §1 (NEW) .]

(b). The conservator is individually liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

[1979, c. 540, §1 (NEW) .]

(c). Claims based on contracts entered into by a conservator in his fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in his fiduciary capacity, whether or not the conservator is individually liable therefor.

[1979, c. 540, §1 (NEW) .]

(d). Any question of liability between the estate and the conservator individually may be determined in a proceeding for accounting, surcharge, or indemnification, or other appropriate proceeding or action.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§5-430. TERMINATION OF PROCEEDING

The protected person, the protected person's personal representative, the conservator or any other interested person may petition the court to terminate the conservatorship. In an action to terminate a conservatorship brought by the protected person, upon presentation by the petitioner of evidence establishing a prima facie case that the person is able to manage the person's property and affairs, the court shall order the termination unless the respondent proves by clear and convincing evidence that the person is unable to manage the person's property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power or disappearance. The court, upon determining that a conservatorship is no longer necessary, shall

terminate the conservatorship upon approval of a final account. Upon termination, title to assets of the estate passes to the former protected person or to the former protected person's successors subject to provision in the order for expenses of administration or to conveyances from the conservator to the former protected person or the former protected person's successors, to evidence the transfer. [2009, c. 349, §9 (AMD).]

SECTION HISTORY

1979, c. 540, §1 (NEW). 2007, c. 308, §2 (AMD). 2009, c. 349, §9 (AMD).

§5-431. PAYMENT OF DEBT AND DELIVERY OF PROPERTY TO FOREIGN CONSERVATOR WITHOUT LOCAL PROCEEDINGS

Any person indebted to a protected person, or having possession of property or of an instrument evidencing a debt, stock, or chose in action belonging to a protected person may pay or deliver to a conservator, guardian of the estate or other like fiduciary appointed by a court of the state of residence of the protected person, upon being presented with proof of his appointment and an affidavit made by him or on his behalf stating: [1979, c. 540, §1 (NEW).]

- (1). That no protective proceeding relating to the protected person is pending in this State; and

[1979, c. 540, §1 (NEW) .]

- (2). That the foreign conservator is entitled to payment or to receive delivery.

[1979, c. 540, §1 (NEW) .]

If the person to whom the affidavit is presented is not aware of any protective proceeding pending in this State, payment or delivery in response to the demand and affidavit discharges the debtor or possessor. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§5-432. FOREIGN CONSERVATOR; PROOF OF AUTHORITY; BOND; POWERS

If no local conservator has been appointed and no petition in a protective proceeding is pending in this State, a domiciliary foreign conservator may file with a court in this State in a county in which property belonging to the protected person is located, authenticated copies of his appointment, of any official bond he has given and a certificate, dated within 60 days, proving his current authority. Thereafter, he may exercise as to assets in this State all powers of a local conservator and may maintain actions and proceedings in this State subject to any conditions imposed upon nonresident parties generally. [1987, c. 392, §6 (AMD).]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1987, c. 392, §6 (AMD).

Part 5: DURABLE POWER OF ATTORNEY

§5-501. DEFINITION

(REPEALED)

SECTION HISTORY

1979, c. 540, §1 (NEW). 1985, c. 645, §2 (RPR). 1991, c. 719, §3 (RPR). 2009, c. 292, §6 (AFF). 2009, c. 292, §1 (RP).

§5-502. DURABLE POWER OF ATTORNEY NOT AFFECTED BY DISABILITY OR INCAPACITY

(REPEALED)

SECTION HISTORY

1979, c. 540, §1 (NEW). 1991, c. 719, §3 (RPR). 2009, c. 292, §6 (AFF). 2009, c. 292, §1 (RP).

§5-503. RELATION OF ATTORNEY-IN-FACT TO COURT-APPOINTED FIDUCIARY

(REPEALED)

SECTION HISTORY

1991, c. 719, §3 (NEW). 2009, c. 292, §6 (AFF). 2009, c. 292, §1 (RP).

§5-504. POWER OF ATTORNEY NOT REVOKED UNTIL NOTICE

(REPEALED)

SECTION HISTORY

1991, c. 719, §3 (NEW). 2009, c. 292, §6 (AFF). 2009, c. 292, §1 (RP).

§5-505. PROOF OF CONTINUANCE OF DURABLE AND OTHER POWERS OF ATTORNEY BY AFFIDAVIT

(REPEALED)

SECTION HISTORY

1991, c. 719, §3 (NEW). 2009, c. 292, §6 (AFF). 2009, c. 292, §1 (RP).

§5-506. DURABLE HEALTH CARE POWER OF ATTORNEY

(REPEALED)

SECTION HISTORY

1991, c. 719, §3 (NEW). 1995, c. 378, §B3 (AMD). 2003, c. 618, §C1 (AMD). 2009, c. 292, §6 (AFF). 2009, c. 292, §1 (RP).

§5-508. DURABLE FINANCIAL POWER OF ATTORNEY

(REPEALED)

SECTION HISTORY

RR 1997, c. 1, §13 (RNU). 1997, c. 453, §3 (NEW). 1997, c. 683, §C6 (RPR). 1999, c. 66, §1 (AMD). 1999, c. 118, §1 (AMD). 2003, c. 618, §B8 (AMD). 2003, c. 618, §B20 (AFF). 2005, c. 184, §1 (AMD). 2005, c. 284, §§1,2 (AMD). 2005, c. 353, §2 (AMD). 2009, c. 292, §6 (AFF). 2009, c. 292, §1 (RP).

§5-509. IN-PERSON SIGNATURE REQUIRED

(REPEALED)

SECTION HISTORY

1999, c. 711, §1 (NEW). 2009, c. 292, §6 (AFF). 2009, c. 292, §1 (RP).

§5-510. RECOGNITION OF POWERS OF ATTORNEY FROM OTHER JURISDICTIONS

(REPEALED)

SECTION HISTORY

2005, c. 284, §3 (NEW). 2009, c. 292, §6 (AFF). 2009, c. 292, §1 (RP).

Part 5-A: UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

Subpart 1: GENERAL PROVISIONS

§5-511. SHORT TITLE

This Part may be known and cited as "the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act." [2011, c. 564, §1 (NEW).]

SECTION HISTORY

2011, c. 564, §1 (NEW).

§5-512. DEFINITIONS

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings. [2011, c. 564, §1 (NEW).]

(a). "Adult" means an individual who has attained 18 years of age.

[2011, c. 564, §1 (NEW) .]

(b). "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under Part 4.

[2011, c. 564, §1 (NEW) .]

(c). "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under Part 3.

[2011, c. 564, §1 (NEW) .]

(d). "Guardianship order" means an order appointing a guardian.

[2011, c. 564, §1 (NEW) .]

(e). "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.

[2011, c. 564, §1 (NEW) .]

(f). "Incapacitated person" means an adult for whom a guardian has been appointed or an adult who is an incapacitated person within the meaning of section 5-101, subsection (1).

[2011, c. 564, §1 (NEW) .]

(g). "Party" means an interested person within the meaning of section 1-201, subsection (20), including the respondent, petitioner, guardian, conservator or any other person allowed by the court to participate in a guardianship or protective proceeding.

[2011, c. 564, §1 (NEW) .]

(h). "Person," except in the term "incapacitated person" or "protected person," means: an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; public corporation; government or governmental subdivision, agency or instrumentality; or any other legal or commercial entity.

[2011, c. 564, §1 (NEW) .]

(i). "Protected person" means an adult for whom a protective order has been issued.

[2011, c. 564, §1 (NEW) .]

(j). "Protective order" means an order appointing a conservator or other order related to management or disposition of an adult's property.

[2011, c. 564, §1 (NEW) .]

(k). "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.

[2011, c. 564, §1 (NEW) .]

(l). "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

[2011, c. 564, §1 (NEW) .]

(m). "Respondent" means an adult for whom a protective order or the appointment of a guardian is sought.

[2011, c. 564, §1 (NEW) .]

(n). "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

[2011, c. 564, §1 (NEW) .]

SECTION HISTORY

2011, c. 564, §1 (NEW).

§5-513. INTERNATIONAL APPLICATION OF PART

A court of this State may treat a foreign country as if it were a state for the purpose of applying this subpart and subparts 2, 3 and 5. [2011, c. 564, §1 (NEW) .]

SECTION HISTORY

2011, c. 564, §1 (NEW).

§5-514. COMMUNICATION BETWEEN COURTS

(a). A court of this State may communicate with a court in another state concerning a proceeding arising under this Part. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection (b), the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

[2011, c. 564, §1 (NEW) .]

(b). Courts may communicate concerning schedules, calendars, court records and other administrative matters without making a record.

[2011, c. 564, §1 (NEW) .]

SECTION HISTORY

2011, c. 564, §1 (NEW).

§5-515. COOPERATION BETWEEN COURTS

(a). In a guardianship or protective proceeding in this State, a court of this State may request the appropriate court of another state to do any of the following:

- (1). Hold an evidentiary hearing; [2011, c. 564, §1 (NEW) .]
- (2). Order a person in that state to produce evidence or give testimony pursuant to procedures of that state; [2011, c. 564, §1 (NEW) .]
- (3). Order that an evaluation or assessment be made of the respondent; [2011, c. 564, §1 (NEW) .]
- (4). Order any appropriate investigation of a person involved in a proceeding; [2011, c. 564, §1 (NEW) .]
- (5). Forward to the court of this State a certified copy of the transcript or other record of a hearing under paragraph (1) or any other proceeding, any evidence otherwise produced under paragraph (2) and any evaluation or assessment prepared in compliance with an order under paragraph (3) or (4); [2011, c. 564, §1 (NEW) .]
- (6). Issue any order necessary to ensure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated person or protected person; [2011, c. 564, §1 (NEW) .]
- (7). Issue an order authorizing the release of medical, financial, criminal or other relevant information in that state, including protected health information as defined in 45 Code of Federal Regulations, Section 160.103, as amended. [2011, c. 564, §1 (NEW) .]

[2011, c. 564, §1 (NEW) .]

(b). If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (a), a court of this State has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

[2011, c. 564, §1 (NEW) .]

SECTION HISTORY

2011, c. 564, §1 (NEW).

§5-516. TAKING TESTIMONY IN ANOTHER STATE

(a). In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this State for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

[2011, c. 564, §1 (NEW) .]

(b). In a guardianship or protective proceeding, a court in this State may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this State shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

[2011, c. 564, §1 (NEW) .]

(c). Documentary evidence transmitted from another state to a court of this State by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.

[2011, c. 564, §1 (NEW) .]

SECTION HISTORY

2011, c. 564, §1 (NEW) .

Subpart 2: JURISDICTION**§5-521. DEFINITIONS; SIGNIFICANT CONNECTION FACTORS**

(a). As used in this subpart, unless the context otherwise indicates, the following terms have the following meanings.

(1). "Emergency" means a circumstance that likely will result in substantial harm to a respondent's health, safety or welfare, and for which the appointment of a guardian is necessary. [2011, c. 564, §1 (NEW) .]

(2). "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least 6 consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian or, if none, the state in which the respondent was physically present, including any period of temporary absence, for at least 6 consecutive months ending within the 6 months prior to the filing of the petition. [2011, c. 564, §1 (NEW) .]

(3). "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available. [2011, c. 564, §1 (NEW) .]

[2011, c. 564, §1 (NEW) .]

(b). In determining under section 5-523 and section 5-531, subsection (e) whether a respondent has a significant connection with a particular state, the court shall consider:

(1). The location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding; [2011, c. 564, §1 (NEW) .]

(2). The length of time the respondent at any time was physically present in the state and the duration of any absence; [2011, c. 564, §1 (NEW) .]

(3). The location of the respondent's property; and [2011, c. 564, §1 (NEW).]

(4). The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship and receipt of services. [2011, c. 564, §1 (NEW).]

[2011, c. 564, §1 (NEW) .]

SECTION HISTORY

2011, c. 564, §1 (NEW).

§5-522. EXCLUSIVE BASIS

This subpart provides the exclusive jurisdictional basis for a court of this State to appoint a guardian or issue a protective order for an adult. [2011, c. 564, §1 (NEW).]

SECTION HISTORY

2011, c. 564, §1 (NEW).

§5-523. JURISDICTION

A court of this State has jurisdiction to appoint a guardian or issue a protective order for a respondent if: [2011, c. 564, §1 (NEW).]

(a). This State is the respondent's home state;

[2011, c. 564, §1 (NEW) .]

(b). On the date the petition is filed, this State is a significant-connection state and:

(1). The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this State is a more appropriate forum; [2011, c. 564, §1 (NEW) .]

(2). The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state and, before the court makes the appointment or issues the order:

(i) A petition for an appointment or order is not filed in the respondent's home state;

(ii) An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(iii) The court in this State concludes that it is an appropriate forum under the factors set forth in section 5-526; [2011, c. 564, §1 (NEW).]

(3). This State does not have jurisdiction under either paragraph (1) or (2), the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this State is the more appropriate forum and jurisdiction in this State is consistent with the constitutions of this State and the United States; or [2011, c. 564, §1 (NEW).]

(4). The requirements for special jurisdiction under section 5-524 are met. [2011, c. 564, §1 (NEW) .]

[2011, c. 564, §1 (NEW) .]

SECTION HISTORY

2011, c. 564, §1 (NEW).

§5-524. SPECIAL JURISDICTION

(a). If this State is not the respondent's home state and not a significant-connection state, a court of this State has special jurisdiction to do any of the following:

- (1). Appoint a guardian in an emergency for a term not exceeding 6 months for a respondent who is physically present in this State; [2011, c. 564, §1 (NEW).]
- (2). Issue a protective order with respect to real or tangible personal property located in this State; or [2011, c. 564, §1 (NEW).]
- (3). Appoint a guardian or conservator for an incapacitated person or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to section 5-531. [2011, c. 564, §1 (NEW).]

[2011, c. 564, §1 (NEW) .]

(b). If a petition for the appointment of a guardian in an emergency is brought in this State and this State was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

[2011, c. 564, §1 (NEW) .]

SECTION HISTORY

2011, c. 564, §1 (NEW).

§5-525. EXCLUSIVE AND CONTINUING JURISDICTION

Except as otherwise provided in section 5-524, a court that has appointed a guardian or issued a protective order consistent with this Part has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms. [2011, c. 564, §1 (NEW).]

SECTION HISTORY

2011, c. 564, §1 (NEW).

§5-526. APPROPRIATE FORUM

(a). A court of this State having jurisdiction under section 5-523 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

[2011, c. 564, §1 (NEW) .]

(b). If a court of this State declines to exercise its jurisdiction under subsection (a), it shall either:

- (1). Dismiss or stay the proceeding; or [2011, c. 564, §1 (NEW).]
- (2). Impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state. [2011, c. 564, §1 (NEW).]

[2011, c. 564, §1 (NEW) .]

(c). In determining whether it is an appropriate forum, the court shall consider all relevant factors, which may include:

- (1). Any expressed preference of the respondent; [2011, c. 564, §1 (NEW).]
- (2). Whether abuse, neglect or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect or exploitation; [2011, c. 564, §1 (NEW).]
- (3). The length of time the respondent was physically present in or was a legal resident of this State or another state; [2011, c. 564, §1 (NEW).]
- (4). The distance of the respondent from the court in each state; [2011, c. 564, §1 (NEW).]
- (5). The financial circumstances of the respondent's estate; [2011, c. 564, §1 (NEW).]
- (6). The nature and location of the evidence; [2011, c. 564, §1 (NEW).]
- (7). The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence; [2011, c. 564, §1 (NEW).]
- (8). The familiarity of the court of each state with the facts and issues in the proceeding; and [2011, c. 564, §1 (NEW).]
- (9). If an appointment were made, the court's ability to monitor the conduct of the guardian or conservator. [2011, c. 564, §1 (NEW).]

[2011, c. 564, §1 (NEW).]

SECTION HISTORY

2011, c. 564, §1 (NEW).

§5-527. JURISDICTION DECLINED BY REASON OF CONDUCT

(a). If at any time a court of this State determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

- (1). Decline to exercise jurisdiction; [2011, c. 564, §1 (NEW).]
- (2). Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or [2011, c. 564, §1 (NEW).]
- (3). Continue to exercise jurisdiction after considering:
 - (i) The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;
 - (ii) Whether it is a more appropriate forum than the court of any other state under the factors set forth in section 5-526, subsection (c); and
 - (iii) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section 5-523. [2011, c. 564, §1 (NEW).]

[2011, c. 564, §1 (NEW).]

(b). If a court of this State determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court

costs, communication expenses, witness fees and expenses and travel expenses. The court may not assess fees, costs or expenses of any kind against this State or a governmental subdivision, agency or instrumentality of this State unless authorized by law other than this Part.

[2011, c. 564, §1 (NEW) .]

SECTION HISTORY

2011, c. 564, §1 (NEW) .

§5-528. NOTICE OF PROCEEDING

If a petition for the appointment of a guardian or issuance of a protective order is brought in this State and this State was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this State, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this State. [2011, c. 564, §1 (NEW) .]

SECTION HISTORY

2011, c. 564, §1 (NEW) .

§5-529. PROCEEDINGS IN MORE THAN ONE STATE

Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this State under section 5-524, subsection (a), paragraph (1) or (2), if a petition for the appointment of a guardian or issuance of a protective order is filed in this State and in another state and neither petition has been dismissed or withdrawn, the following apply: [2011, c. 564, §1 (NEW) .]

(a). If the court in this State has jurisdiction under section 5-523, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to section 5-523 before the appointment or issuance of the order.

[2011, c. 564, §1 (NEW) .]

(b). If the court in this State does not have jurisdiction under section 5-523, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this State shall dismiss the petition unless the court in the other state determines that the court in this State is a more appropriate forum.

[2011, c. 564, §1 (NEW) .]

SECTION HISTORY

2011, c. 564, §1 (NEW) .

Subpart 3: TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

§5-531. TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP TO ANOTHER STATE

(a). A guardian or conservator appointed in this State may petition the court to transfer the guardianship or conservatorship to another state.

[2011, c. 564, §1 (NEW) .]

(b). Notice of a petition under subsection (a) must be given to the persons that would be entitled to notice of a petition in this State for the appointment of a guardian or conservator.

[2011, c. 564, §1 (NEW) .]

(c). On the court's own motion or on request of the guardian or conservator, the incapacitated person or protected person or other person required to be notified of the petition, the court shall hold a hearing or provide an opportunity for a hearing to be held on a petition filed pursuant to subsection (a).

[2011, c. 564, §1 (NEW) .]

(d). The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

(1). The incapacitated person is physically present in or is reasonably expected to move permanently to the other state; [2011, c. 564, §1 (NEW) .]

(2). An objection to the transfer has not been made or, if an objection has been made, the objector has not established by a preponderance of the evidence that the transfer would be contrary to the best interests of the incapacitated person; and [2011, c. 564, §1 (NEW) .]

(3). Plans for care and services for the incapacitated person in the other state are reasonable and sufficient. [2011, c. 564, §1 (NEW) .]

[2011, c. 564, §1 (NEW) .]

(e). The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

(1). The protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in section 5-521, subsection (b); [2011, c. 564, §1 (NEW) .]

(2). An objection to the transfer has not been made or, if an objection has been made, the objector has not established by a preponderance of the evidence that the transfer would be contrary to the best interests of the protected person; and [2011, c. 564, §1 (NEW) .]

(3). Adequate arrangements will be made for management or disposition of the protected person's property. [2011, c. 564, §1 (NEW) .]

[2011, c. 564, §1 (NEW) .]

(f). The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

(1). A provisional order accepting the proceeding from the court to which the proceeding is to be transferred that is issued under provisions similar to section 5-532; and [2011, c. 564, §1 (NEW) .]

(2). The documents required to terminate a guardianship or conservatorship in this State. [2011, c. 564, §1 (NEW).]

[2011, c. 564, §1 (NEW) .]

SECTION HISTORY

2011, c. 564, §1 (NEW).

§5-532. ACCEPTING GUARDIANSHIP OR CONSERVATORSHIP TRANSFERRED FROM ANOTHER STATE

(a). To confirm transfer of a guardianship or conservatorship transferred to this State under provisions similar to section 5-531, the guardian or conservator must petition the court in this State to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

[2011, c. 564, §1 (NEW) .]

(b). Notice of a petition under subsection (a) must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this State. The notice must be given in the same manner as notice is required to be given in this State.

[2011, c. 564, §1 (NEW) .]

(c). On the court's own motion or on request of the guardian or conservator, the incapacitated person or protected person or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (a).

[2011, c. 564, §1 (NEW) .]

(d). The court shall issue an order provisionally granting a petition filed under subsection (a) unless:

(1). An objection is made and the objector establishes by a preponderance of the evidence that transfer of the proceeding would be contrary to the best interests of the incapacitated person or protected person; or
[2011, c. 564, §1 (NEW).]

(2). The guardian or conservator is ineligible for appointment in this State. [2011, c. 564, §1 (NEW) .]

[2011, c. 564, §1 (NEW) .]

(e). The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this State upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to section 5-531 transferring the proceeding to this State.

[2011, c. 564, §1 (NEW) .]

(f). In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated person's or protected person's incapacity and the appointment of the guardian or conservator.

[2011, c. 564, §1 (NEW) .]

(g). The denial by a court of this State of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this State under Part 3 or 4 if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

[2011, c. 564, §1 (NEW) .]

SECTION HISTORY

2011, c. 564, §1 (NEW).

Subpart 4: REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

§5-541. REGISTRATION OF GUARDIANSHIP

If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this State, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this State by filing as a foreign judgment in a court, in any appropriate county of this State, certified copies of the order and letters of office and the guardian's notification to the appointing court of an intent to register in this State. [2011, c. 564, §1 (NEW) .]

SECTION HISTORY

2011, c. 564, §1 (NEW).

§5-542. REGISTRATION OF PROTECTIVE ORDERS

If a conservator has been appointed in another state and a petition for a protective order is not pending in this State, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this State by filing as a foreign judgment in a court of this State, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office, of the conservator's notification to the appointing court of an intent to register in this State and of any bond. [2011, c. 564, §1 (NEW) .]

SECTION HISTORY

2011, c. 564, §1 (NEW).

§5-543. EFFECT OF REGISTRATION

(a). Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this State all powers authorized in the order of appointment except as prohibited under the laws of this State, including maintaining actions and proceedings in this State and, if the guardian or conservator is not a resident of this State, subject to any conditions imposed upon nonresident parties.

[2011, c. 564, §1 (NEW) .]

(b). A court of this State may grant any relief available under this Part and other law of this State to enforce a registered order.

[2011, c. 564, §1 (NEW) .]

SECTION HISTORY

2011, c. 564, §1 (NEW).

Subpart 5: MISCELLANEOUS PROVISIONS

§5-551. UNIFORMITY OF APPLICATION AND CONSTRUCTION

In applying and construing this Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2011, c. 564, §1 (NEW).]

SECTION HISTORY

2011, c. 564, §1 (NEW).

§5-552. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

This Part modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001 et seq., but does not modify, limit or supersede 15 United States Code, Section 7001(c) or authorize electronic delivery of any of the notices described in 15 United States Code, Section 7003(b). [2011, c. 564, §1 (NEW).]

SECTION HISTORY

2011, c. 564, §1 (NEW).

§5-553. TRANSITIONAL PROVISIONS

(a). This Part applies to guardianship and protective proceedings begun on or after July 1, 2013.

[2011, c. 564, §1 (NEW) .]

(b). Subparts 1, 3 and 4 and sections 5-551 and 5-552 apply to proceedings begun before July 1, 2013, regardless of whether a guardianship or protective order has been issued.

[2011, c. 564, §1 (NEW) .]

SECTION HISTORY

2011, c. 564, §1 (NEW).

§5-554. EFFECTIVE DATE

This Part takes effect July 1, 2013. [2011, c. 564, §1 (NEW).]

SECTION HISTORY

2011, c. 564, §1 (NEW).

Part 6: PUBLIC GUARDIAN AND CONSERVATOR**§5-601. PUBLIC GUARDIANS AND CONSERVATORS; GENERAL**

(a). In any case in which a guardian or conservator may be appointed by the court under this Article, the court may appoint a public guardian or conservator as provided in this Part for incapacitated persons as defined in section 5-101, subsection (1) who are in need of protective services.

[2011, c. 542, Pt. A, §14 (AMD) .]

(b). The Department of Health and Human Services shall act as the public guardian or conservator for incapacitated persons in need of protective services.

[2011, c. 542, Pt. A, §15 (AMD) .]

(c). Except as otherwise provided in this Part, the appointment, termination, rights and duties, and other provisions for guardians and conservators in this Article shall apply to public guardians and conservators.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1993, c. 410, §CCC4 (AMD). 1995, c. 560, §K4 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 354, §3 (AMD). 2005, c. 397, §A12 (AMD). 2011, c. 542, Pt. A, §§14, 15 (AMD).

§5-602. PRIORITY OF PRIVATE GUARDIAN OR CONSERVATOR

No public guardian or conservator shall be appointed if the court determines that a suitable private guardian or conservator is available and willing to assume responsibilities for such service. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§5-603. EXCLUSIVENESS OF PUBLIC GUARDIAN OR CONSERVATOR

When the court has appointed a public guardian or conservator under this Part, no other guardian or conservator, as the case may be, shall be appointed for the same ward or protected person during the continuation of the public guardianship or public conservatorship. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§5-604. NOMINATION OF PUBLIC GUARDIAN OR CONSERVATOR

(a). Any person who is eligible to petition for appointment of a guardian under section 5-303, subsection (a), including the commissioner of any state department, the head of any state institution, the overseers of the poor, and the welfare director or health officer of any municipality may nominate the public guardian.

[1979, c. 540, §1 (NEW) .]

(b). Any person who is eligible to petition for appointment of a conservator under section 5-404, subsection (a), including the commissioner of any state department, the head of any state institution, the overseer of the poor, and the welfare director or health officer of any municipality may nominate the public conservator.

[1979, c. 540, §1 (NEW) .]

(c). Except as supplemented by section 5-605, the proceedings for determining the appointment of a public guardian or conservator shall be governed by the provisions of this Article for the appointment of guardians and conservators generally.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§5-605. ACCEPTANCE BY PUBLIC GUARDIAN OR CONSERVATOR; PLAN

Prior to the appointment of a public guardian or conservator, the appropriate agency nominated shall accept or reject the nomination in writing within 30 days of its receipt of notification that it has been nominated, and if the nomination is accepted shall file a detailed plan which, where relevant, shall include but not be limited to the type of proposed living arrangement for the ward, how the ward's financial needs will be met, how the ward's medical and other remedial needs will be met, how the ward's social needs will be met, and a plan for the ward's continuing contact with relatives and friends, as well as a plan for the management of the ward's or protected person's estate in the case of a public conservatorship. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§5-606. OFFICIALS AUTHORIZED TO ACT AS PUBLIC GUARDIAN OR CONSERVATOR

(a).

[2011, c. 542, Pt. A, §16 (RP) .]

(b). When the Department of Health and Human Services is appointed public guardian or conservator of an incapacitated person, the authority of the public guardian or conservator must be exercised by the Commissioner of Health and Human Services and by any persons duly delegated by the commissioner to exercise such authority.

[2011, c. 542, Pt. A, §16 (AMD) .]

(c). Persons duly delegated by the officials authorized to act under subsection (b) may include a staff of competent social workers, or competent social workers assigned to the public guardian or conservator by the Department of Health and Human Services. In the event that the delegation is to an individual, such individual must be qualified therefor by reason of education or experience, or both, in administering to the needs of the individual or individuals over whom the individual is to exercise administrative or supervisory authority under the public guardian.

[2011, c. 542, Pt. A, §16 (AMD) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1981, c. 493, §2 (AMD). 1985, c. 437, §1 (AMD). 1993, c. 410, §CCC5 (AMD). 1995, c. 560, §§K5,82 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 354, §3 (AMD). RR 2003, c. 2, §29 (COR). 2003, c. 689, §§B6,7 (REV). 2011, c. 542, Pt. A, §16 (AMD).

§5-607. DUTIES AND POWERS OF A PUBLIC GUARDIAN OR CONSERVATOR

A public guardian or conservator has the same powers, rights and duties respecting his ward or the protected person as provided for guardians and conservators by the other parts of this Article except as otherwise specifically provided in this Part, including the following particular provisions: [1979, c. 540, §1 (NEW).]

(1). If a public guardian places his ward in any facility described in Title 22, sections 5 and 1811, such placement shall be made only if the facility is duly licensed. In the event that the license of any such facility is suspended or revoked, the public guardian having any ward placed therein shall remove such ward and effect an appropriate placement of the ward as soon as practicable after knowledge of the suspension or revocation of the license.

[1979, c. 540, §1 (NEW) .]

(2). The public guardian or conservator at least annually, and at any time when ordered by the court, shall review the case of every person for whom the public guardian or conservator is acting under this Part. A report of each review shall be filed with the court. Each review shall contain an examination and evaluation of the plan for the ward or protected person and recommendations for a modification thereof, as deemed appropriate or necessary.

[1979, c. 540, §1 (NEW) .]

(3). The public guardian or conservator shall keep books of account or other records showing separately the principal amount received, increments thereto and disbursements therefrom for the benefit of the ward or protected person, and such other records as are appropriate for the particular situation, together with the name of the ward or protected person, the source from which the money was received and the purpose for which the money was expended.

[1979, c. 540, §1 (NEW) .]

(4). The public guardian, in the absence of available next of kin, may authorize the performance of an autopsy upon the body of the deceased ward. The public guardian, in the absence of available next of kin, or in the event that next of kin refuses to assume responsibility therefor, shall cause any deceased ward to be suitably buried and shall have authority to expend funds of the ward for that purpose, and in the event the ward is without funds at the time of death, the public guardian shall cause him to be suitably buried at public expense, as in the case of the burial of any other deceased indigent person.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§5-608. DETERMINATION OF NEED FOR GUARDIANSHIP OF MENTALLY RETARDED PERSONS IN INSTITUTIONS AND RESIDENCE FACILITIES

(REPEALED)

SECTION HISTORY

1979, c. 540, §1 (NEW). 1995, c. 395, §G6 (AMD). 1995, c. 395, §G20 (AFF). 2011, c. 542, Pt. A, §17 (RP).

§5-609. NO CHANGE IN RIGHTS TO SERVICES

The appointment of a public guardian or conservator in no way enlarges or diminishes the ward's or protected person's right to services made available to all incapacitated persons in the State except for the provision of guardianship or conservatorship services as provided under this Article. [2011, c. 542, Pt. A, §18 (AMD).]

SECTION HISTORY

1979, c. 540, §1 (NEW). 2011, c. 542, Pt. A, §18 (AMD).

§5-610. NO CHANGE IN POWERS AND DUTIES OF AGENCY HEADS AND TRUSTEES

Nothing in this Article shall abrogate any other powers or duties vested by law in the head of any public institution, or vested by the settlor of a trust in the trustee thereof, for the benefit of any ward or protected person for whom the public guardian or conservator is appointed. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§5-611. BOND

The public guardian or conservator shall not be required to file bonds in individual guardianships or conservatorships, but shall give a surety bond for the joint benefit of the wards or protected persons placed under the responsibility of the public guardian or conservator and the State of Maine, with a surety company or companies authorized to do business within the State, in an amount not less than the total value of all assets held by the public guardian or conservator, which amount shall be computed at the end of each state fiscal year and approved by the judge of the probate court for Kennebec County. At no time shall the bond of each of the public guardians or conservators be less than \$500 respectively. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§5-612. COMPENSATION

(a). The public guardian or conservator shall receive such reasonable amounts for its expenses as guardian or conservator as the Probate Court may allow. The amounts so allowed shall be allocated to an account from which may be drawn expenses for filing fees, bond premiums, court costs and other expenses required in the administration of the functions of the public guardian or conservator. No amounts thus received may inure to the benefit of any employee of the public guardian or conservator. Any balance in the account at the end of a fiscal year shall not lapse but shall be carried forward from year to year and used for the purposes provided for in this subsection.

[1987, c. 295, (AMD) .]

(b). Any personal expenditures made on the ward's or protected person's behalf by the public guardian or conservator shall, when properly evidenced, be reimbursed out of the ward's or protected person's estate. Claims for services rendered by state agencies shall be submitted to the probate judge for approval before payment.

[1987, c. 295, (AMD) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1987, c. 295, (AMD).

§5-613. INCAPACITATED PERSONS; GUARDIAN AD LITEM COSTS

(1). When the following occur, the costs of the guardian ad litem or any other special costs may be paid by the Department of Health and Human Services, within the limits of the department's budget:

(a). An allegedly incapacitated person is in need of protective services and:

(1) A guardian ad litem is appointed under the provisions of this Code; or

(2) A court incurs special costs in a proceeding concerning such a person; and [1995, c. 560, Pt. K, §6 (AMD); 1995, c. 560, Pt. K, §83 (AFF).]

(b). Appointment of a public guardian or conservator is sought or the allegedly incapacitated person, within 3 months prior to the filing of the petition:

(1) Is or has been a client of the Department of Health and Human Services; or

(3) Has received services from a worker from the Department of Health and Human Services.

[2005, c. 397, Pt. A, §13 (AMD).]

[2005, c. 397, Pt. A, §13 (AMD) .]

(2). Exception. The Department of Health and Human Services is not liable for the costs set out in subsection (1) if the department can demonstrate that the allegedly incapacitated person has assets against which the costs may be assessed or that another more appropriate funding source is available and subject to the court's jurisdiction.

[2011, c. 542, Pt. A, §19 (AMD) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1983, c. 241, §3 (AMD). 1985, c. 817, (RPR). 1993, c. 410, §CCC6 (AMD). 1995, c. 560, §K6 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 354, §3 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 397, §A13 (AMD). 2011, c. 542, Pt. A, §19 (AMD).

§5-614. LIMITED PUBLIC GUARDIANSHIPS

The provisions of section 5-105 apply to the appointment of public guardians. [1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW).

Part 7: LIVING WILLS

§5-701. SHORT TITLE AND DEFINITIONS

(REPEALED)

SECTION HISTORY

1989, c. 830, §1 (NEW). 1991, c. 441, §1 (RPR). 1991, c. 719, §4 (AMD). 1995, c. 378, §B4 (RP).

§5-702. DECLARATION RELATING TO USE OF LIFE-SUSTAINING TREATMENT

(REPEALED)

SECTION HISTORY

1989, c. 830, §1 (NEW). 1991, c. 191, (AMD). 1991, c. 441, §2 (AMD). 1991, c. 719, §5 (AMD). 1995, c. 378, §B4 (RP).

§5-703. WHEN DECLARATION OPERATIVE

(REPEALED)

SECTION HISTORY

1989, c. 830, §1 (NEW). 1991, c. 719, §6 (AMD). 1995, c. 378, §B4 (RP).

§5-704. REVOCATION OF DECLARATION*(REPEALED)*

SECTION HISTORY

1989, c. 830, §1 (NEW). 1995, c. 378, §B4 (RP).

§5-705. RECORDING DETERMINATION OF TERMINAL CONDITION OR PERSISTENT VEGETATIVE STATE AND DECLARATION*(REPEALED)*

SECTION HISTORY

1989, c. 830, §1 (NEW). 1991, c. 719, §7 (AMD). 1995, c. 378, §B4 (RP).

§5-706. TREATMENT OF QUALIFIED PATIENTS*(REPEALED)*

SECTION HISTORY

1989, c. 830, §1 (NEW). 1995, c. 378, §B4 (RP).

§5-707. CONSENT BY OTHERS TO WITHDRAWAL OR WITHHOLDING OF TREATMENT*(REPEALED)*

SECTION HISTORY

1989, c. 830, §1 (NEW). 1991, c. 441, §3 (AMD). 1991, c. 719, §§8,9 (AMD). 1995, c. 378, §B4 (RP).

§5-708. TRANSFER OF PATIENTS*(REPEALED)*

SECTION HISTORY

1989, c. 830, §1 (NEW). 1995, c. 378, §B4 (RP).

§5-709. IMMUNITIES*(REPEALED)*

SECTION HISTORY

1989, c. 830, §1 (NEW). 1995, c. 378, §B4 (RP).

§5-710. PENALTIES*(REPEALED)*

SECTION HISTORY

1989, c. 830, §1 (NEW). 1995, c. 378, §B4 (RP).

§5-711. MISCELLANEOUS PROVISIONS*(REPEALED)*

SECTION HISTORY

1989, c. 830, §1 (NEW). 1991, c. 719, §10 (AMD). 1995, c. 378, §B4 (RP).

§5-712. WHEN HEALTH-CARE PROVIDER MAY PRESUME VALIDITY OF DECLARATION

(REPEALED)

SECTION HISTORY

1989, c. 830, §1 (NEW). 1995, c. 378, §B4 (RP).

§5-713. RECOGNITION OF DECLARATION EXECUTED IN ANOTHER STATE

(REPEALED)

SECTION HISTORY

1989, c. 830, §1 (NEW). 1995, c. 378, §B4 (RP).

§5-714. EFFECT OF PREVIOUS DECLARATION

(REPEALED)

SECTION HISTORY

1989, c. 830, §1 (NEW). 1995, c. 378, §B4 (RP).

Part 8: UNIFORM HEALTH-CARE DECISIONS ACT

§5-801. DEFINITIONS

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 378, Pt. A, §1 (NEW).]

(a). "Advance health-care directive" means an individual instruction from, or a power of attorney for health care by, an individual with capacity.

[1995, c. 378, Pt. A, §1 (NEW) .]

(b). "Agent" means an individual with capacity designated in a power of attorney for health care to make a health-care decision for the individual granting the power.

[1995, c. 378, Pt. A, §1 (NEW) .]

(c). "Capacity" means the ability to have a basic understanding of the diagnosed condition and to understand the significant benefits, risks and alternatives to the proposed health care and the consequences of foregoing the proposed treatment, the ability to make and communicate a health care decision and the ability to understand the consequences of designating an agent or surrogate to make health-care decisions.

[1995, c. 378, Pt. A, §1 (NEW) .]

(d). "Guardian" means a judicially appointed guardian or conservator having authority to make a health-care decision for an individual.

[1995, c. 378, Pt. A, §1 (NEW) .]

(e). "Health care" means any care, treatment, service or procedure to maintain, diagnose or otherwise affect an individual's physical or mental condition.

[1995, c. 378, Pt. A, §1 (NEW) .]

(f). "Health-care decision" means a decision made by an individual with capacity or by the individual's agent, guardian or surrogate, regarding the individual's health care, including:

(1). Selection and discharge of health-care providers and institutions; [1995, c. 378, Pt. A, §1 (NEW) .]

(2). Approval or disapproval of diagnostic tests, surgical procedures, programs of medication and orders not to resuscitate; and [1995, c. 378, Pt. A, §1 (NEW) .]

(3). Directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care, including life-sustaining treatment. [1995, c. 378, Pt. A, §1 (NEW) .]

[1995, c. 378, Pt. A, §1 (NEW) .]

(g). "Health-care institution" means an institution, facility or agency licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business.

[1995, c. 378, Pt. A, §1 (NEW) .]

(h). "Health-care provider" means an individual licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession.

[1995, c. 378, Pt. A, §1 (NEW) .]

(i). "Individual instruction" means a direction from an individual with capacity concerning a health-care decision for the individual.

[1995, c. 378, Pt. A, §1 (NEW) .]

(j). "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

[1995, c. 378, Pt. A, §1 (NEW) .]

(k). "Physician" means an individual authorized to practice medicine under Title 32.

[1995, c. 378, Pt. A, §1 (NEW) .]

(l). "Power of attorney for health care" means the designation of an agent with capacity to make health-care decisions for the individual granting the power.

[1995, c. 378, Pt. A, §1 (NEW) .]

(m). "Primary physician" means a physician designated by an individual with capacity or by the individual's agent, guardian or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility.

[1995, c. 378, Pt. A, §1 (NEW) .]

(n). "Reasonably available" means readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health-care needs.

[1995, c. 378, Pt. A, §1 (NEW) .]

(o). "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or a territory or insular possession subject to the jurisdiction of the United States.

[1995, c. 378, Pt. A, §1 (NEW) .]

(p). "Supervising health-care provider" means the primary physician or, if there is no primary physician or the primary physician is not reasonably available, the health-care provider who has undertaken primary responsibility for an individual's health care.

[1995, c. 378, Pt. A, §1 (NEW) .]

(q). "Surrogate" means an individual with capacity, other than a patient's agent or guardian, authorized under this Part to make health care decisions as provided in section 5-805.

[1999, c. 411, §1 (AMD) .]

(r). "Life-sustaining treatment" means any medical procedure or intervention that, when administered to a person without capacity and in either a terminal condition or a persistent vegetative state, will serve only to prolong the process of dying. "Life-sustaining treatment" may include artificially administered nutrition and hydration, which is the provision of nutrients and liquids through the use of tubes, intravenous procedures or similar medical interventions.

[1995, c. 378, Pt. A, §1 (NEW) .]

(s). "Persistent vegetative state" means a state that occurs after coma in which the patient totally lacks higher cortical and cognitive function, but maintains vegetative brain stem processes, with no realistic possibility of recovery, as diagnosed in accordance with acceptable medical standards.

[1995, c. 378, Pt. A, §1 (NEW) .]

(t). "Terminal condition" means an incurable and irreversible condition that, without the administration of life-sustaining treatment, in the opinion of the primary physician, will result in death within a relatively short time.

[1995, c. 378, Pt. A, §1 (NEW) .]

SECTION HISTORY

1995, c. 378, §A1 (NEW). 1999, c. 411, §1 (AMD).

§5-802. ADVANCE HEALTH-CARE DIRECTIVES

(a). An adult or emancipated minor with capacity may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises. An oral instruction is valid only if made to a health-care provider or to an individual who may serve as a surrogate under section 5-805, subsection (b).

[1995, c. 378, Pt. A, §1 (NEW) .]

(b). An adult or emancipated minor with capacity may execute a power of attorney for health care, which may authorize the agent to make any health-care decision the principal could have made while having capacity. The power must be in writing and signed by the principal and 2 witnesses. Notwithstanding any law validating electronic or digital signatures, signatures of the principal and witnesses must be made in person and not by electronic means. The power remains in effect notwithstanding the principal's later incapacity and may include individual instructions. Unless related to the principal by blood, marriage or adoption, an agent may not be an owner, operator or employee of a residential long-term health-care institution at which the principal is receiving care.

[1999, c. 711, §2 (AMD) .]

(c). Unless otherwise specified in a power of attorney for health care, the authority of an agent becomes effective only upon a determination that the principal lacks capacity, and ceases to be effective upon a determination that the principal has recovered capacity.

[1995, c. 378, Pt. A, §1 (NEW) .]

(d). Unless otherwise specified in a written advance health-care directive, a determination that an individual lacks or has recovered capacity or that another condition exists that affects an individual instruction, the authority of an agent or the validity of an advance health-care directive must be made by the primary physician, by a court of competent jurisdiction or, for an individual who has included a directive authorizing mental health treatment in an advance health-care directive, by a person qualified to conduct an examination pursuant to Title 34-B, section 3863.

[1999, c. 423, §1 (AMD) .]

(e). An agent shall make a health-care decision in accordance with the principal's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the agent's determination of the principal's best interest. In determining the principal's best interest, the agent shall consider the principal's personal values to the extent known to the agent.

[1995, c. 378, Pt. A, §1 (NEW) .]

(f). A health-care decision made by an agent for a principal is effective without judicial approval.

[1995, c. 378, Pt. A, §1 (NEW) .]

(g). A written advance health-care directive may include the individual's nomination of a guardian of the person.

[1995, c. 378, Pt. A, §1 (NEW) .]

(h). An advance health-care directive is valid for purposes of this Part if it complies with this Part, regardless of when or where executed or communicated, or if valid under the laws of the state in which it was executed. An advance health-care directive that is valid where executed or communicated is valid for the purposes of this Part.

[2005, c. 284, §4 (AMD) .]

(i). An advance health care directive is valid for purposes of directing mental health treatment. The terms of the directive must be construed in accordance with this Part and Title 34-B, sections 3831 and 3862.

[1999, c. 423, §2 (NEW) .]

(j). A surrogate or an agent named in an advance health-care directive has the power and authority to serve as the personal representative of the patient who executed the health care directive for all purposes of the federal Health Insurance Portability and Accountability Act of 1996, 42 United States Code, Section 1320d et seq. and its regulations, 45 Code of Federal Regulations 160-164. The surrogate or agent has all the rights of the patient with respect to the use and disclosure of the individually identifiable health information and other medical records of the patient.

[2003, c. 618, Pt. C, §2 (NEW) .]

SECTION HISTORY

1995, c. 378, §A1 (NEW). 1999, c. 423, §§1,2 (AMD). 1999, c. 711, §2 (AMD). 2003, c. 618, §C2 (AMD). 2005, c. 284, §4 (AMD).

§5-803. REVOCATION OF ADVANCE HEALTH-CARE DIRECTIVE

(a). An individual with capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health-care provider.

[1995, c. 378, Pt. A, §1 (NEW) .]

(b). An individual with capacity may revoke all or part of an advance health-care directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke.

[1995, c. 378, Pt. A, §1 (NEW) .]

(c). A health-care provider, agent, guardian or surrogate who is informed of a revocation by an individual with capacity shall promptly communicate the fact of the revocation to the supervising health-care provider and to any health-care institution at which the patient is receiving care.

[1995, c. 378, Pt. A, §1 (NEW) .]

(d). A decree of annulment, divorce, dissolution of marriage or legal separation revokes a previous designation of a spouse as agent unless otherwise specified in the decree or in a power of attorney for health care.

[1995, c. 378, Pt. A, §1 (NEW) .]

(e). An advance health-care directive that conflicts with an earlier advance health-care directive revokes the earlier directive to the extent of the conflict.

[1995, c. 378, Pt. A, §1 (NEW) .]

SECTION HISTORY

1995, c. 378, §A1 (NEW).

§5-804. OPTIONAL FORM

The following form may, but need not, be used to create an advance health-care directive. The other sections of this Part govern the effect of this or any other writing used to create an advance health-care directive. An individual with capacity may complete or modify all or any part of the following form.

ADVANCE HEALTH-CARE DIRECTIVE

Explanation

[1995, c. 378, Pt. A, §1 (NEW).]

You have the right to give instructions about your own health care. You also have the right to name someone else to make health-care decisions for you. This form lets you do either or both of these things. It also lets you express your wishes regarding donation of organs and the designation of your primary physician. If you use this form, you may complete or modify all or any part of it. You are free to use a different form. [1995, c. 378, Pt. A, §1 (NEW).]

Part 1 of this form is a power of attorney for health care. Part 1 lets you name another individual as agent to make health-care decisions for you if you become incapable of making your own decisions or if you want someone else to make those decisions for you now even though you are still capable. You may also name an alternate agent to act for you if your first choice is not willing, able or reasonably available to make decisions for you. Unless related to you, your agent may not be an owner, operator or employee of a residential long-term health-care institution at which you are receiving care. [1995, c. 378, Pt. A, §1 (NEW).]

Unless the form you sign limits the authority of your agent, your agent may make all health-care decisions for you. This form has a place for you to limit the authority of your agent. You need not limit the authority of your agent if you wish to rely on your agent for all health-care decisions that may have to be made. If you choose not to limit the authority of your agent, your agent will have the right to: [1995, c. 378, Pt. A, §1 (NEW).]

(a). Consent or refuse consent to any care, treatment, service or procedure to maintain, diagnose or otherwise affect a physical or mental condition;

[1995, c. 378, Pt. A, §1 (NEW) .]

(b). Select or discharge health-care providers and institutions;

[1995, c. 378, Pt. A, §1 (NEW) .]

(c). Approve or disapprove diagnostic tests, surgical procedures, programs of medication and orders not to resuscitate; and

[1995, c. 378, Pt. A, §1 (NEW) .]

(d). Direct the provision, withholding or withdrawal of artificial nutrition and hydration and all other forms of health care, including life-sustaining treatment.

[1995, c. 378, Pt. A, §1 (NEW) .]

Part 2 of this form lets you give specific instructions about any aspect of your health care. Choices are provided for you to express your wishes regarding the provision, withholding or withdrawal of treatment to keep you alive, including the provision of artificial nutrition and hydration, as well as the provision of pain relief. Space is also provided for you to add to the choices you have made or for you to write out any additional wishes. [1995, c. 378, Pt. A, §1 (NEW).]

Part 3 of this form lets you express an intention to donate your bodily organs and tissues following your death. [1995, c. 378, Pt. A, §1 (NEW).]

Part 4 of this form lets you designate a physician to have primary responsibility for your health care. [1995, c. 378, Pt. A, §1 (NEW).]

After completing this form, sign and date the form at the end. You must have 2 other individuals sign as witnesses. Give a copy of the signed and completed form to your physician, to any other health-care providers you may have, to any health-care institution at which you are receiving care and to any health-care agents you have named. You should talk to the person you have named as agent to make sure that he or she understands your wishes and is willing to take the responsibility. [1995, c. 378, Pt. A, §1 (NEW).]

You have the right to revoke this advance health-care directive or replace this form at any time. [1995, c. 378, Pt. A, §1 (NEW).]

PART 1

POWER OF ATTORNEY FOR HEALTH CARE

(1) DESIGNATION OF AGENT: I designate the following individual as my agent to make health-care decisions for me:

.....
 (name of individual you choose as agent)

 (address) (city) (state) (zip code)

 (home phone) (work phone)

OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able or reasonably available to make a health-care decision for me, I designate as my first alternate agent:

.....
 (name of individual you choose as first alternate agent)

 (address) (city) (state) (zip code)

 (home phone) (work phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able or reasonably available to make a health-care decision for me, I designate as my second alternate agent:

.....
 (name of individual you choose as second alternate agent)

 (address) (city) (state) (zip code)

 (home phone) (work phone)

(2) AGENT'S AUTHORITY: My agent is authorized to make all health-care decisions for me, including decisions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care to keep me alive, except as I state here:

.....

 (Add additional sheets if needed.)

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary physician determines that I am unable to make my own health-care decisions unless I mark the following box. If I mark this box [], my agent's authority to make health-care decisions for me takes effect immediately.

(4) AGENT'S OBLIGATION: My agent shall make health-care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health-care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) **NOMINATION OF GUARDIAN:** If a guardian of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able or reasonably available to act as guardian, I nominate the alternate agents whom I have named, in the order designated.

[2003, c. 688, Pt. M, §1 (AMD); 2003, c. 688, Pt. M, §2 (AFF).]

PART 2

INSTRUCTIONS FOR HEALTH CARE

If you are satisfied to allow your agent to determine what is best for you in making end-of-life decisions, you need not fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

(6) **END-OF-LIFE DECISIONS:** I direct that my health-care providers and others involved in my care provide, withhold or withdraw treatment in accordance with the choice I have marked below:

☐ (a) Choice Not To Prolong Life

I do not want my life to be prolonged if (i) I have an incurable and irreversible condition that will result in my death within a relatively short time, (ii) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness, or (iii) the likely risks and burdens of treatment would outweigh the expected benefits, OR

☐ (b) Choice To Prolong Life

I want my life to be prolonged as long as possible within the limits of generally accepted health-care standards.

(7) **ARTIFICIAL NUTRITION AND HYDRATION:** Artificial nutrition and hydration must be provided, withheld or withdrawn in accordance with the choice I have made in paragraph (6) unless I mark the following box. If I mark this box ☐, artificial nutrition and hydration must be provided regardless of my condition and regardless of the choice I have made in paragraph (6).

(8) **RELIEF FROM PAIN:** Except as I state in the following space, I direct that treatment for alleviation of pain or discomfort be provided at all times, even if it hastens my death:

.....

(9) **OTHER WISHES:** (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that:

.....

(Add additional sheets if needed)

[1995, c. 378, Pt. A, §1 (NEW).]

PART 3

DONATION OF ORGANS AT DEATH (OPTIONAL)

(10) Upon my death (mark applicable box)

☐ (a) I give any needed organs, tissues or parts, OR

☐ (b) I give the following organs, tissues or parts only

.....

(c) My gift is for the following purposes (strike any of the following you do not want)

(i) Transplant

- (ii) Therapy
- (iii) Research
- (iv) Education

[1995, c. 378, Pt. A, §1 (NEW).]

PART 4
PRIMARY PHYSICIAN
(OPTIONAL)

(11) I designate the following physician as my primary physician:

.....
(name of physician)

.....
(address) (city) (state) (zip code)

.....
(phone)

OPTIONAL: If the physician I have designated above is not willing, able or reasonably available to act as my primary physician, I designate the following physician as my primary physician:

.....
(name of physician)

.....
(address) (city) (state) (zip code)

.....
(phone)

* * * * *

(12) EFFECT OF COPY: A copy of this form has the same effect as the original.

(13) SIGNATURES: Sign and date the form here:

.....
(date) (sign your name)

.....
(address) (print your name)

.....
(city) (state)

SIGNATURES OF WITNESSES:

First witness Second witness

.....
(print name) (print name)

.....
(address) (address)

.....
(city) (state) (city) (state)

.....
(signature of witness) (signature of witness)

.....
(date) (date)

[1995, c. 625, Pt. B, §4 (AMD).]

SECTION HISTORY

1995, c. 378, §A1 (NEW). 1995, c. 625, §B4 (AMD). 2003, c. 618, §C3 (AMD). 2003, c. 688, §M1 (AMD). 2003, c. 688, §M2 (AFF). 2003, c. 688, Pt. M, §1 (AMD). 2003, c. 688, Pt. M, §2 (AFF).

§5-805. DECISIONS BY SURROGATE

(a). A surrogate may make a decision to withhold or withdraw life-sustaining treatment for a patient who is an adult or emancipated minor if the patient has been determined by the primary physician to lack capacity, no agent or guardian has been appointed or the agent or guardian is not reasonably available and the patient is in a terminal condition or a persistent vegetative state as determined by the primary physician.

A surrogate also is authorized to make any other health care decision for a patient who is an adult or emancipated minor if the patient has been determined by the primary physician to lack capacity and no agent or guardian exists, except that a surrogate may not deny surgery, procedures or other interventions that are lifesaving and medically necessary.

A medically necessary procedure is one providing the most patient-appropriate intervention or procedure that can be safely and effectively given.

[1999, c. 411, §2 (AMD) .]

(b). Any member of the following classes of the patient's family who is reasonably available, in descending order of priority, may act as surrogate:

- (1). The spouse, unless legally separated; [1995, c. 378, Pt. A, §1 (NEW).]
- (1-A). An adult who shares an emotional, physical and financial relationship with the patient similar to that of a spouse; [1999, c. 411, §3 (NEW).]
- (2). An adult child; [1995, c. 378, Pt. A, §1 (NEW).]
- (3). A parent; [1995, c. 378, Pt. A, §1 (NEW).]
- (4). An adult brother or sister; [1995, c. 378, Pt. A, §1 (NEW).]
- (5). An adult grandchild; [1995, c. 378, Pt. A, §1 (NEW).]
- (6). An adult niece or nephew, related by blood or adoption; [1995, c. 378, Pt. A, §1 (NEW).]
- (7). An adult aunt or uncle, related by blood or adoption; or [1995, c. 378, Pt. A, §1 (NEW).]
- (8). Another adult relative of the patient, related by blood or adoption, who is familiar with the patient's personal values and is reasonably available for consultation. [1995, c. 378, Pt. A, §1 (NEW).]

[1999, c. 411, §3 (AMD) .]

(c). If none of the individuals eligible to act as surrogate under subsection (b) is reasonably available, an adult who has exhibited special concern for the patient, who is familiar with the patient's personal values and who is reasonably available may act as surrogate.

[1995, c. 378, Pt. A, §1 (NEW) .]

(d). A surrogate shall communicate the surrogate's assumption of authority as promptly as practicable to the members of the patient's family specified in subsection (b) who can be readily contacted.

[1995, c. 378, Pt. A, §1 (NEW) .]

(e). If more than one member of a class assumes authority to act as surrogate and they, or members of different classes who are reasonably available, do not agree on a health-care decision and the supervising health-care provider is so informed, the supervising health-care provider may comply with the decision of the class having priority or a majority of the members of that class who have communicated their views to the provider. The health-care provider may refer the members of the class or classes to a neutral 3rd party for assistance in resolving the dispute or to a court of competent jurisdiction. If the class is evenly divided concerning the health-care decision and the supervising health-care provider is so informed, that class and all individuals having lower priority are disqualified from making the decision.

[1995, c. 378, Pt. A, §1 (NEW) .]

(f). A surrogate shall make a health-care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's best interest and in good faith. In determining the patient's best interest, the surrogate shall consider the patient's personal values to the extent known to the surrogate. A consent is not valid if it conflicts with the intention of the patient previously expressed to the surrogate.

[1995, c. 378, Pt. A, §1 (NEW) .]

(g). A health-care decision made by a surrogate for a patient lacking capacity is effective without judicial approval.

[1995, c. 378, Pt. A, §1 (NEW) .]

(h). An individual with capacity at any time may disqualify another, including a member of the individual's family, from acting as the individual's surrogate by a signed writing or by personally informing the supervising health-care provider of the disqualification.

[1995, c. 378, Pt. A, §1 (NEW) .]

(i). A surrogate may not be an owner, operator or employee of a residential long-term health-care institution at which the patient is receiving care unless the surrogate is one of the following:

- (1). The spouse of the patient; [1995, c. 378, Pt. A, §1 (NEW) .]
- (2). An adult child of the patient; [1995, c. 378, Pt. A, §1 (NEW) .]
- (3). A parent of the patient; or [1995, c. 378, Pt. A, §1 (NEW) .]
- (4). A relative of the patient with whom the patient has resided for more than 6 months prior to the decision. [1995, c. 378, Pt. A, §1 (NEW) .]

[1995, c. 378, Pt. A, §1 (NEW) .]

(j). A supervising health-care provider may require an individual claiming the right to act as surrogate for a patient to provide a written declaration under penalty of perjury stating facts and circumstances reasonably sufficient to establish the claimed authority.

[1995, c. 378, Pt. A, §1 (NEW) .]

SECTION HISTORY

1995, c. 378, §A1 (NEW). 1999, c. 411, §§2,3 (AMD).

§5-806. DECISIONS BY GUARDIAN

(a). Except as authorized by a court of competent jurisdiction, a guardian shall comply with the ward's individual instructions and other wishes, if any, expressed while the ward had capacity and to the extent known to the guardian, and may not revoke the ward's advance health-care directive unless the appointing court expressly so authorizes.

[1995, c. 378, Pt. A, §1 (NEW) .]

(b). Absent a court order to the contrary, a health-care decision of an agent takes precedence over that of a guardian.

[1995, c. 378, Pt. A, §1 (NEW) .]

(c). A health-care decision made by a guardian for the ward is effective without judicial approval, except under the following circumstances:

(1). The guardian's decision is contrary to the ward's individual instructions and other wishes, expressed while the ward had capacity; or [1995, c. 378, Pt. A, §1 (NEW) .]

(2). The guardian seeks to withhold or withdraw life-sustaining treatment from the ward, against the advice of the ward's primary physician and in the absence of instructions from the ward, made while the ward had capacity. [1995, c. 378, Pt. A, §1 (NEW) .]

[1995, c. 378, Pt. A, §1 (NEW) .]

SECTION HISTORY

1995, c. 378, §A1 (NEW).

§5-807. OBLIGATIONS OF HEALTH-CARE PROVIDER

(a). Before implementing a health-care decision made for a patient, a supervising health-care provider, if possible, shall promptly communicate to the patient the decision made and the identity of the person making the decision.

[1995, c. 378, Pt. A, §1 (NEW) .]

(b). A supervising health-care provider who knows of the existence of an advance health-care directive, a revocation of an advance health-care directive or a designation or disqualification of a surrogate shall promptly record its existence in the patient's health-care record and, if it is in writing, shall request a copy and if one is furnished shall arrange for its maintenance in the health-care record.

[1995, c. 378, Pt. A, §1 (NEW) .]

(c). A primary physician who makes or is informed of a determination that a patient lacks or has recovered capacity or that another condition exists that affects an individual instruction or the authority of an agent, guardian, or surrogate or the validity of an advance health-care directive shall promptly record the determination in the patient's health-care record and communicate the determination to the patient, if possible, and to any person then authorized to make health-care decisions for the patient.

[1995, c. 378, Pt. A, §1 (NEW) .]

(d). Except as provided in subsections (e) and (f), a health-care provider or institution providing care to a patient shall:

(1). Comply with an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health-care decisions for the patient; and [1995, c. 378, Pt. A, §1 (NEW).]

(2). Comply with a health-care decision for the patient made by a person then authorized to make health-care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity. [1995, c. 378, Pt. A, §1 (NEW).]

[1995, c. 378, Pt. A, §1 (NEW) .]

(e). A health-care provider may decline to comply with an individual instruction or health-care decision if the instruction or decision appears not to be in compliance with this Act or for reasons of conscience. A health-care institution may decline to comply with an individual instruction or health-care decision if the instruction or decision appears not to be in compliance with this Act or if the instruction or decision is contrary to a policy of the institution that is expressly based on reasons of conscience and if the policy was timely communicated to the patient or to a person then authorized to make health-care decisions for the patient.

[1995, c. 378, Pt. A, §1 (NEW) .]

(f). A health-care provider or institution may decline to comply with an individual instruction or health-care decision that requires medically ineffective health care or health care contrary to generally accepted health-care standards applicable to the health-care provider or institution.

[1995, c. 378, Pt. A, §1 (NEW) .]

(g). A health-care provider or institution that declines to comply with an individual instruction or health-care decision shall:

(1). Promptly so inform the patient, if possible, and any person then authorized to make health-care decisions for the patient; [1995, c. 378, Pt. A, §1 (NEW).]

(2). Provide continuing care to the patient until a transfer can be effected or a court of competent jurisdiction issues a final order regarding the decision; and [1995, c. 378, Pt. A, §1 (NEW) .]

(3). Unless the patient or person then authorized to make health-care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health-care provider or institution that is willing to comply with the instruction or decision. [1995, c. 378, Pt. A, §1 (NEW).]

[1995, c. 378, Pt. A, §1 (NEW) .]

(h). A health-care provider or institution may not require or prohibit the execution or revocation of an advance health-care directive as a condition for providing health care.

[1995, c. 378, Pt. A, §1 (NEW) .]

SECTION HISTORY

1995, c. 378, §A1 (NEW).

§5-808. HEALTH-CARE INFORMATION

Unless otherwise specified in an advance health-care directive, a person then authorized to make health-care decisions for a patient has the same rights as the patient to request, receive, examine, copy and consent to the disclosure of medical or any other health-care information. [1995, c. 378, Pt. A, §1 (NEW).]

SECTION HISTORY

1995, c. 378, §A1 (NEW).

§5-809. IMMUNITIES

(a). A health-care provider or institution acting in good faith and in accordance with generally accepted health-care standards applicable to the health-care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

- (1). Complying with a health-care decision of a person apparently having authority and capacity to make a health-care decision for a patient, including a decision to withhold or withdraw health care; [1995, c. 378, Pt. A, §1 (NEW).]
- (2). Declining to comply with a health-care decision of a person based on a belief that the person then lacked authority or capacity, or that the decision otherwise does not comply with this Act; [1995, c. 378, Pt. A, §1 (NEW).]
- (3). Complying with an advance health-care directive and assuming that the directive was valid when made and has not been revoked or terminated; or [1995, c. 378, Pt. A, §1 (NEW).]
- (4). Seeking judicial relief from a court of competent jurisdiction. [1995, c. 378, Pt. A, §1 (NEW).]

[1995, c. 378, Pt. A, §1 (NEW) .]

(b). An individual acting as agent, guardian or surrogate under this Part is not subject to civil or criminal liability or to discipline for unprofessional conduct for health-care decisions made in good faith.

[1995, c. 378, Pt. A, §1 (NEW) .]

SECTION HISTORY

1995, c. 378, §A1 (NEW).

§5-810. STATUTORY DAMAGES

(a). A health-care provider or institution that intentionally violates this Part is subject to liability to the aggrieved individual for damages of \$500 or actual damages resulting from the violation, whichever is greater, plus reasonable attorney's fees.

[1995, c. 378, Pt. A, §1 (NEW) .]

(b). A person who intentionally falsifies, forges, conceals, defaces or obliterates an individual's advance health-care directive or a revocation of an advance health-care directive without the individual's consent, or who coerces or fraudulently induces an individual to give, revoke or not to give an advance health-care directive, is subject to liability to that individual for damages of \$2,500 or actual damages resulting from the action, whichever is greater, plus reasonable attorney's fees.

[1995, c. 378, Pt. A, §1 (NEW) .]

SECTION HISTORY

1995, c. 378, §A1 (NEW).

§5-811. CAPACITY

(a). This Part does not affect the right of an individual to make health-care decisions while having capacity to do so.

[1995, c. 378, Pt. A, §1 (NEW) .]

(b). An individual is presumed to have capacity to make a health-care decision, to give or revoke an advance health-care directive and to designate or disqualify a surrogate. This presumption may be rebutted by a determination by the individual's primary physician or by a court of competent jurisdiction.

[1995, c. 378, Pt. A, §1 (NEW) .]

SECTION HISTORY

1995, c. 378, §A1 (NEW).

§5-812. EFFECT OF COPY

A copy of a written advance health-care directive, revocation of an advance health-care directive or designation or disqualification of a surrogate has the same effect as the original. [1995, c. 378, Pt. A, §1 (NEW).]

SECTION HISTORY

1995, c. 378, §A1 (NEW).

§5-813. EFFECT OF PART

(a). This Part does not create a presumption concerning the intention of an individual who has not made or who has revoked an advance health-care directive.

[1995, c. 378, Pt. A, §1 (NEW) .]

(b). Death resulting from the withholding or withdrawal of health care in accordance with this Part does not for any purpose constitute a suicide or homicide or legally impair or invalidate a policy of insurance or an annuity providing a death benefit, notwithstanding any term of the policy or annuity to the contrary.

[1995, c. 378, Pt. A, §1 (NEW) .]

(c). This Part does not authorize mercy killing, assisted suicide, euthanasia or the provision, withholding, or withdrawal of health care to the extent prohibited by other statutes of this State.

[1995, c. 378, Pt. A, §1 (NEW) .]

(d). This Part does not authorize or require a health-care provider or institution to provide health care contrary to generally accepted health-care standards applicable to the health-care provider or institution.

[1995, c. 378, Pt. A, §1 (NEW) .]

(e). This Part does not authorize an agent or surrogate to consent to the admission of an individual to a mental health-care institution unless the individual's written advance health-care directive expressly so provides.

[1995, c. 378, Pt. A, §1 (NEW) .]

(f). This Part does not affect other statutes of this State governing treatment for mental illness of an individual involuntarily committed to a mental health-care institution.

[1995, c. 378, Pt. A, §1 (NEW) .]

SECTION HISTORY

1995, c. 378, §A1 (NEW) .

§5-814. JUDICIAL RELIEF

On petition of a patient, the patient's agent, guardian or surrogate, a health-care or social services provider or institution involved with the patient's care, a state agency mandated to provide adult protective services pursuant to Title 22, sections 3472 to 3487, or an adult relative or adult friend of the patient, the court may enjoin or direct a health-care decision or other equitable relief. [1995, c. 378, Pt. A, §1 (NEW) .]

SECTION HISTORY

1995, c. 378, §A1 (NEW) .

§5-815. UNIFORMITY OF APPLICATION AND CONSTRUCTION

This Part must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject matter of this Part among states enacting it. [1995, c. 378, Pt. A, §1 (NEW) .]

SECTION HISTORY

1995, c. 378, §A1 (NEW) .

§5-816. SHORT TITLE

This Part may be cited as the Uniform Health-care Decisions Act. [1995, c. 378, Pt. A, §1 (NEW) .]

SECTION HISTORY

1995, c. 378, §A1 (NEW) .

§5-817. EFFECTIVE DATE

This Part takes effect on October 1, 1995. [1995, c. 378, Pt. A, §1 (NEW) .]

SECTION HISTORY

1995, c. 378, §A1 (NEW) .

§5-818. MILITARY ADVANCED MEDICAL DIRECTIVES

A military advanced medical directive executed in accordance with 10 United States Code, Section 1044c is valid in this State. [2005, c. 353, §3 (NEW) .]

SECTION HISTORY

2005, c. 353, §3 (NEW) .

Part 9: MAINE UNIFORM POWER OF ATTORNEY ACT

Subpart 1: GENERAL PROVISIONS AND DEFINITIONS

§5-901. SHORT TITLE

This Part may be known and cited as "the Maine Uniform Power of Attorney Act." [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-902. DEFINITIONS

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(a). "Agent" means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact or otherwise. The term includes an original agent, coagent, successor agent and a person to which an agent's authority is delegated.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). "Durable," with respect to a power of attorney, means not terminated by the principal's incapacity.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(c). "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(d). "Good faith" means honesty in fact.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(e). "Incapacity" means inability of an individual to effectively manage property or business affairs because the individual:

(1). Is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other cause to the extent that the individual lacks sufficient understanding, capacity or ability to receive and evaluate information or make or communicate decisions regarding the individual's property or business affairs; or [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(2). Is:

(i) Missing;

(ii) Detained, including incarcerated in a penal system; or

(iii) Outside the United States and unable to return. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(f). "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality or any other legal or commercial entity.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(g). "Power of attorney" means a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term "power of attorney" is used.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(h). "Presently exercisable general power of appointment," with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal's estate, the principal's creditors or the creditors of the principal's estate. The term includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard or the passage of the specified period. The term does not include a power exercisable in a fiduciary capacity or only by will.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(i). "Principal" means an individual who grants authority to an agent in a power of attorney.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(j). "Property" means anything that may be the subject of ownership, whether real or personal, or legal or equitable, or any interest or right therein.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(k). "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(l). "Registered domestic partner" means an individual registered as a domestic partner under Title 22, section 2710, subsection 3.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(m). "Sign" means, with present intent to authenticate or adopt a record:

(1). To execute or adopt a tangible symbol; or [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(2). To attach to or logically associate with the record an electronic sound, symbol or process. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(n). "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(o). "Stocks and bonds" means stocks, bonds, mutual funds and all other types of securities and financial instruments, whether held directly, indirectly or in any other manner. The term does not include commodity futures contracts and call or put options on stocks or stock indexes.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-903. APPLICABILITY

This Part applies to all powers of attorney except: [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(a). A power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). A power to make health care decisions;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(c). A proxy or other delegation to exercise voting rights or management rights with respect to an entity; and

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(d). A power created on a form prescribed by a government or governmental subdivision, agency or instrumentality for a governmental purpose.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-904. POWER OF ATTORNEY IS DURABLE

A power of attorney created under this Part is durable unless it expressly provides that it is terminated by the incapacity of the principal. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-905. EXECUTION OF POWER OF ATTORNEY; NOTICES

(a). A power of attorney must be signed by the principal or in the principal's conscious presence by another individual directed by the principal to sign the principal's name on the power of attorney. A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments. A power of attorney under this Part is not valid unless it is acknowledged before a notary public or other individual authorized by law to take acknowledgments.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). A durable power of attorney under this Part is not valid unless it contains the following notices substantially in the following form:

"Notice to the Principal: As the "Principal" you are using this power of attorney to grant power to another person (called the Agent) to make decisions about your property and to use your property on your behalf. Under this power of attorney you give your Agent broad and sweeping powers to sell or otherwise dispose of your property without notice to you. Under this document your Agent will continue to have these powers

after you become incapacitated. The powers that you give your Agent are explained more fully in the Maine Uniform Power of Attorney Act, Maine Revised Statutes, Title 18-A, Article 5, Part 9. You have the right to revoke this power of attorney at any time as long as you are not incapacitated. If there is anything about this power of attorney that you do not understand you should ask a lawyer to explain it to you.

Notice to the Agent: As the "Agent" you are given power under this power of attorney to make decisions about the property belonging to the Principal and to dispose of the Principal's property on the Principal's behalf in accordance with the terms of this power of attorney. This power of attorney is valid only if the Principal is of sound mind when the Principal signs it. When you accept the authority granted under this power of attorney a special legal relationship is created between you and the Principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. The duties are more fully explained in the Maine Uniform Power of Attorney Act, Maine Revised Statutes, Title 18-A, Article 5, Part 9 and Title 18-B, sections 802 to 807 and Title 18-B, chapter 9. As the Agent, you are generally not entitled to use the Principal's property for your own benefit or to make gifts to yourself or others unless the power of attorney gives you such authority. If you violate your duty under this power of attorney you may be liable for damages and may be subject to criminal prosecution. You must stop acting on behalf of the Principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events of termination are more fully explained in the Maine Uniform Power of Attorney Act and include, but are not limited to, revocation of your authority or of the power of attorney by the Principal, the death of the Principal or the commencement of divorce proceedings between you and the Principal. If there is anything about this power of attorney or your duties under it that you do not understand you should ask a lawyer to explain it to you."

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-906. VALIDITY OF POWER OF ATTORNEY

(a). A power of attorney executed in this State on or after July 1, 2010 is valid if its execution complies with section 5-905.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). A power of attorney executed in this State before July 1, 2010 is valid if its execution complied with the law of this State as it existed at the time of execution.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(c). A power of attorney executed other than in this State is valid in this State if, when the power of attorney was executed, the execution complied with:

(1). The law of the jurisdiction that determines the meaning and effect of the power of attorney pursuant to section 5-907; or [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(2). The requirements for a military power of attorney pursuant to 10 United States Code, Section 1044b, as amended. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(d). Except as otherwise provided by statute other than this Part, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-907. MEANING AND EFFECT OF POWER OF ATTORNEY

The meaning and effect of a power of attorney is determined by the law of the jurisdiction indicated in the power of attorney and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power of attorney was executed. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-908. NOMINATION OF CONSERVATOR OR GUARDIAN; RELATION OF AGENT TO COURT-APPOINTED FIDUCIARY

(a). In a power of attorney, a principal may nominate a conservator of the principal's estate or guardian of the principal's person for consideration by the court if protective proceedings for the principal's estate or person are begun after the principal executes the power of attorney. Except for good cause shown or disqualification, the court shall make its appointment in accordance with the principal's most recent nomination.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). If, after a principal executes a power of attorney, a court appoints a conservator of the principal's estate or other fiduciary charged with the management of some or all of the principal's property, the agent is accountable to the fiduciary as well as to the principal. The power of attorney is not terminated and the agent's authority continues unless limited, suspended or terminated by the court.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-909. WHEN POWER OF ATTORNEY EFFECTIVE

(a). A power of attorney is effective when executed unless the principal provides in the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine in a writing or other record that the event or contingency has occurred.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(c). If a power of attorney becomes effective upon the principal's incapacity and the principal has not authorized a person to determine whether the principal is incapacitated, or the person authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in a writing or other record by:

(1). A physician that the principal is incapacitated within the meaning of section 5-902, subsection (e), paragraph (1); or [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(2). An attorney at law, a judge or an appropriate governmental official that the principal is incapacitated within the meaning of section 5-902, subsection (e), paragraph (2). [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(d). A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may act as the principal's personal representative pursuant to the federal Health Insurance Portability and Accountability Act of 1996, 42 United States Code, Section 1320d, et seq., as amended, and applicable regulations, to obtain access to the principal's health care information and communicate with the principal's health care provider.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-910. TERMINATION OF POWER OF ATTORNEY OR AGENT'S AUTHORITY

(a). A power of attorney terminates when:

(1). The principal dies; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(2). The principal becomes incapacitated, if the power of attorney is not durable; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(3). The principal revokes the power of attorney; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(4). The power of attorney provides that it terminates; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(5). The purpose of the power of attorney is accomplished; or [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(6). The principal revokes the agent's authority or the agent dies, becomes incapacitated or resigns and the power of attorney does not provide for another agent to act under the power of attorney. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). An agent's authority terminates:

(1). When the principal revokes the authority; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(2). When the agent dies, becomes incapacitated or resigns; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(3). When an action is filed for the termination or annulment of the agent's marriage to the principal or their legal separation, unless the power of attorney otherwise provides; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(4). Upon the sooner to occur of either the marriage of the principal to a person other than the agent if upon or after execution of the power of attorney the principal and the agent are or became registered domestic partners, the filing with the domestic partner registry, in accordance with Title 22, section 2710, subsection 4, of a notice consenting to the termination of a registered domestic partnership of the principal and the agent or upon service, in accordance with Title 22, section 2710, subsection 4, of a notice of intent to terminate the registered domestic partnership of the principal and the agent; or [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(5). The power of attorney terminates. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(c). Unless the power of attorney otherwise provides, an agent's authority is exercisable until the authority terminates under subsection (b), notwithstanding a lapse of time since the execution of the power of attorney.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(d). Termination of an agent's authority or of a power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(e). Incapacity of the principal of a power of attorney that is not durable does not revoke or terminate the power of attorney as to an agent or other person that, without actual knowledge of the incapacity, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(f). The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other powers of attorney are revoked.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-911. COAGENTS AND SUCCESSOR AGENTS

(a). A principal may designate 2 or more persons to act as coagents. Unless the power of attorney otherwise provides, each coagent may exercise its authority independently.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(b). A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve or declines to serve. A principal may grant authority to designate one or more successor agents to an agent or other person designated by name, office or function. Unless the power of attorney otherwise provides, a successor agent:

(1). Has the same authority as that granted to the original agent; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(2). May not act until all predecessor agents have resigned, died, become incapacitated, are no longer qualified to serve or have declined to serve. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(c). Except as otherwise provided in the power of attorney and subsection (d), an agent that does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(d). An agent that has actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if the principal is incapacitated, take any action reasonably appropriate in the circumstances to safeguard the principal's interests. An agent that fails to notify the principal or take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken such action.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-912. REIMBURSEMENT AND COMPENSATION OF AGENT

Unless the power of attorney otherwise provides, an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal and to compensation that is reasonable under the circumstances. The factors set forth in section 3-721, subsection (b) should be considered as guides in determining the reasonableness of compensation under this section. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-913. AGENT'S ACCEPTANCE

Except as otherwise provided in the power of attorney, a person accepts appointment as an agent under a power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-914. AGENT'S DUTIES

(a). Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall:

(1). Act in accordance with the principal's reasonable expectations to the extent actually known by the agent and otherwise act as a fiduciary under the standards of care applicable to trustees as described under Title 18-B, sections 802 to 807 and Title 18-B, chapter 9; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(2). Act in good faith; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(3). Act only within the scope of authority granted in the power of attorney. [2009 , c. 292 , §2 (NEW); 2009 , c. 292 , §6 (AFF) .]

[2009 , c. 292 , §2 (NEW); 2009 , c. 292 , §6 (AFF) .]

(b). Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall:

(1). Act loyally for the principal's benefit; [2009 , c. 292 , §2 (NEW); 2009 , c. 292 , §6 (AFF) .]

(2). Act so as not to create a conflict of interest that impairs the agent's ability to act impartially; [2009 , c. 292 , §2 (NEW); 2009 , c. 292 , §6 (AFF) .]

(3). Act with the care, competence and diligence ordinarily exercised by agents in similar circumstances; [2009 , c. 292 , §2 (NEW); 2009 , c. 292 , §6 (AFF) .]

(4). Keep a record of all receipts, disbursements and transactions made on behalf of the principal; [2009 , c. 292 , §2 (NEW); 2009 , c. 292 , §6 (AFF) .]

(5). Cooperate with a person that has authority to make health care decisions for the principal to carry out such decisions; and [2009 , c. 292 , §2 (NEW); 2009 , c. 292 , §6 (AFF) .]

(6). Attempt to preserve the principal's estate plan, to the extent actually known by the agent, based on all relevant factors, including:

(i) The value and nature of the principal's property;

(ii) The principal's foreseeable obligations and need for maintenance;

(iii) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer and gift taxes; and

(iv) Eligibility for a benefit, a program or assistance under a statute, rule or regulation. [2009 , c. 292 , §2 (NEW); 2009 , c. 292 , §6 (AFF) .]

[2009 , c. 292 , §2 (NEW); 2009 , c. 292 , §6 (AFF) .]

(c). An agent that acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.

[2009 , c. 292 , §2 (NEW); 2009 , c. 292 , §6 (AFF) .]

(d). An agent that acts with care, competence and diligence for the sole interest of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

[2009 , c. 292 , §2 (NEW); 2009 , c. 292 , §6 (AFF) .]

(e). If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence and diligence under the circumstances.

[2009 , c. 292 , §2 (NEW); 2009 , c. 292 , §6 (AFF) .]

(f). Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines.

[2009 , c. 292 , §2 (NEW); 2009 , c. 292 , §6 (AFF) .]

(g). An agent that exercises authority to delegate to another person the authority granted by the principal or that engages another person on behalf of the principal is not liable for an act, error of judgment or default of that person if the agent exercises care, competence and diligence in selecting and monitoring the person.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(h). Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested, within 30 days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional 30 days.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-915. EXONERATION OF AGENT

A provision in a power of attorney relieving an agent of liability for breach of duty is binding on the principal and the principal's successors in interest except to the extent the provision: [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(a). Relieves the agent of liability for breach of duty committed dishonestly, with an improper motive or with reckless indifference to the purposes of the power of attorney; or

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). Was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-916. JUDICIAL RELIEF

(a). The following persons may petition the Probate Court or the Superior Court for the county in which either the principal or the agent resides to construe a power of attorney or review the agent's conduct and grant appropriate relief:

(1). The principal or the agent; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(2). A guardian, conservator or other fiduciary acting for the principal; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(3). A person authorized to make health care decisions for the principal; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(4). The principal's spouse, registered domestic partner, parent or descendant; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(5). An individual who would qualify as a presumptive heir of the principal; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(6). A person named as a beneficiary to receive any property, benefit or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(7). A governmental agency having regulatory authority to protect the welfare of the principal; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(8). The principal's caregiver or another person that demonstrates sufficient interest in the principal's welfare; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(9). A person asked to accept the power of attorney. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). Upon motion by the principal, the court shall dismiss a petition filed under this section, unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-917. AGENT'S LIABILITY

An agent that violates this chapter is liable to the principal or the principal's successors in interest for the amount required to: [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(a). Restore the value of the principal's property to what it would have been had the violation not occurred; and

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). Reimburse the principal or the principal's successors in interest for the attorney's fees and costs paid on the agent's behalf.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-918. AGENT'S RESIGNATION; NOTICE

Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by giving notice to the principal and, if the principal is incapacitated: [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(a). To the conservator or guardian, if one has been appointed for the principal, and a coagent or successor agent; or

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). If there is no person described in subsection (a), to:

(1). The principal's caregiver; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(2). Another person reasonably believed by the agent to have sufficient interest in the principal's welfare; or [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(3). A governmental agency having authority to protect the welfare of the principal. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-919. ACCEPTANCE OF AND RELIANCE UPON ACKNOWLEDGED POWER OF ATTORNEY

(a). For purposes of this section and section 5-920, "acknowledged" means purportedly verified before a notary public or other individual authorized to take acknowledgements.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(b). A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the signature is not genuine may rely upon the presumption under section 5-905 that the signature is genuine.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(c). A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the power of attorney is void, invalid or terminated, that the purported agent's authority is void, invalid or terminated or that the agent is exceeding or improperly exercising the agent's authority may rely upon the power of attorney as if the power of attorney were genuine, valid and still in effect, the agent's authority were genuine, valid and still in effect and the agent had not exceeded and had properly exercised the authority.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(d). A person that is asked to accept an acknowledged power of attorney may request, and rely upon, without further investigation:

(1). An agent's certification under penalty of perjury of any factual matter concerning the principal, agent or power of attorney; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(2). An English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(3). An opinion of counsel as to any matter of law concerning the power of attorney if the person making the request provides in a writing or other record the reason for the request. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(e). An English translation or an opinion of counsel requested under this section must be provided at the principal's expense unless the request is made more than 7 business days after the power of attorney is presented for acceptance.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(f). For purposes of this section and section 5-920, a person that conducts activities through employees is without actual knowledge of a fact relating to a power of attorney, a principal or an agent if the employee conducting the transaction involving the power of attorney is without actual knowledge of the fact.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-920. LIABILITY FOR REFUSAL TO ACCEPT ACKNOWLEDGED POWER OF ATTORNEY

(a). Except as otherwise provided in subsection (b):

(1). A person shall either accept an acknowledged power of attorney or request a certification, a translation or an opinion of counsel under section 5-919, subsection (d) no later than 7 business days after presentation of the power of attorney for acceptance; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(2). If a person requests a certification, a translation or an opinion of counsel under section 5-919, subsection (d), the person shall accept the power of attorney no later than 5 business days after receipt of the certification, translation or opinion of counsel; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(3). A person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). A person is not required to accept an acknowledged power of attorney if:

(1). The person is not otherwise required to engage in a transaction with the principal in the same circumstances; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(2). Engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with federal law; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(3). The person has actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(4). A request for a certification, a translation or an opinion of counsel under section 5-919, subsection (d) is refused; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(5). The person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification, a translation or an opinion of counsel under section 5-919, subsection (d) has been requested or provided; or [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(6). The person has a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation or abandonment by the agent or a person acting for or with the agent and the person makes, or has actual knowledge that another person has made, a report to the Department of Health and Human Services regarding such beliefs. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(c). A person that refuses in violation of this section to accept an acknowledged power of attorney is subject to:

(1). A court order mandating acceptance of the power of attorney; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(2). Liability for reasonable attorney's fees and costs incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-921. PRINCIPLES OF LAW AND EQUITY

Unless displaced by a provision of this Part, the principles of law and equity supplement this Part. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-922. LAWS APPLICABLE TO FINANCIAL INSTITUTIONS AND ENTITIES

This Part does not supersede any other law applicable to financial institutions or other entities, and the other law controls if inconsistent with this Part. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-923. REMEDIES UNDER OTHER LAW

The remedies under this Part are not exclusive and do not abrogate any right or remedy under the law of this State other than this Part. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

Subpart 2: AUTHORITY

§5-931. AUTHORITY THAT REQUIRES SPECIFIC GRANT; GRANT OF GENERAL AUTHORITY

(a). An agent under a power of attorney may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

(1). Create, amend, revoke or terminate an inter vivos trust; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(2). Make a gift; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(3). Create or change rights of survivorship; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(4). Create or change a beneficiary designation; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(5). Delegate authority granted under the power of attorney; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(6). Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(7). Exercise fiduciary powers that the principal has authority to delegate; or [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(8). Disclaim property, including a power of appointment. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). Notwithstanding a grant of authority to do an act described in subsection (a), unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, registered domestic partner or descendant of the principal may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer or otherwise.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(c). Subject to subsections (a), (b), (d) and (e), if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in sections 5-934 through 5-946.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(d). Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to section 5-947.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(e). Subject to subsections (a), (b) and (d), if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(f). Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this State and whether or not the authority is exercised or the power of attorney is executed in this State.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(g). An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-932. INCORPORATION OF AUTHORITY

(a). An agent has authority described in this subpart if the power of attorney refers to general authority with respect to the descriptive term for the subjects stated in sections 5-934 through 5-947 or cites the section in which the authority is described.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). A reference in a power of attorney to general authority with respect to the descriptive term for a subject in sections 5-934 through 5-947 or a citation to a section of sections 5-934 through 5-947 incorporates the entire section as if it were set out in full in the power of attorney.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(c). A principal may modify authority incorporated by reference.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-933. CONSTRUCTION OF AUTHORITY GENERALLY

Except as otherwise provided in the power of attorney, by executing a power of attorney that incorporates by reference a subject described in sections 5-934 through 5-947 or that grants to an agent authority to do all acts that a principal could do pursuant to section 5-931, subsection (c), a principal authorizes the agent, with respect to that subject, to: [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(a). Demand, receive and obtain by litigation or otherwise, money or another thing of value to which the principal is, may become or claims to be entitled and conserve, invest, disburse or use anything so received or obtained for the purposes intended;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). Contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate, release or modify the contract or another contract made by or on behalf of the principal;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(c). Execute, acknowledge, seal, deliver, file or record any instrument or communication the agent considers desirable to accomplish a purpose of a transaction, including creating at any time a schedule listing some or all of the principal's property and attaching it to the power of attorney;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(d). Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(e). Seek on the principal's behalf the assistance of a court or other governmental agency to carry out an act authorized in the power of attorney;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(f). Engage, compensate and discharge an attorney, accountant, discretionary investment manager, expert witness or other advisor;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(g). Prepare, execute and file a record, report or other document to safeguard or promote the principal's interest under a statute, rule or regulation;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(h). Communicate with any representative or employee of a government or governmental subdivision, agency or instrumentality on behalf of the principal;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(i). Access communications intended for and communicate on behalf of the principal, whether by mail, electronic transmission, telephone or other means; and

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(j). Do any lawful act with respect to the subject and all property related to the subject.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-934. REAL PROPERTY

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to real property authorizes the agent to: [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(a). Demand, buy, lease, receive, accept as a gift or as security for an extension of credit or otherwise acquire or reject an interest in real property or a right incident to real property;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). Sell; exchange; convey with or without covenants, representations or warranties; quitclaim; release; surrender; retain title for security; encumber; partition; consent to partitioning; subject to an easement or covenant; subdivide; apply for zoning or other governmental permits; plat or consent to platting; develop; grant an option concerning; lease; sublease; contribute to an entity in exchange for an interest in that entity; or otherwise grant or dispose of an interest in real property or a right incident to real property;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(c). Pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(d). Release, assign, satisfy or enforce by litigation or otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien or other claim to real property that exists or is asserted;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(e). Manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including:

(1). Insuring against liability or casualty or other loss; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(2). Obtaining or regaining possession of or protecting the interest or right by litigation or otherwise; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(3). Paying, assessing, compromising or contesting taxes or assessments or applying for and receiving refunds in connection with them; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(4). Purchasing supplies, hiring assistance or labor and making repairs or alterations to the real property; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(f). Use, develop, alter, replace, remove, erect or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(g). Participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, hold and act with respect to stocks and bonds or other property received in a plan of reorganization, including:

(1). Selling or otherwise disposing of them; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(2). Exercising or selling an option, right of conversion or similar right with respect to them; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(3). Exercising any voting rights in person or by proxy; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(h). Change the form of title of an interest in or right incident to real property; and

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(i). Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-935. TANGIBLE PERSONAL PROPERTY

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to tangible personal property authorizes the agent to: [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(a). Demand, buy, receive, accept as a gift or as security for an extension of credit or otherwise acquire or reject ownership or possession of tangible personal property or an interest in tangible personal property;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(b). Sell; exchange; convey with or without covenants, representations or warranties; quitclaim; release; surrender; create a security interest in; grant options concerning; lease; sublease; or otherwise dispose of tangible personal property or an interest in tangible personal property;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(c). Grant a security interest in tangible personal property or an interest in tangible personal property as security to borrow money or pay, renew or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(d). Release, assign, satisfy or enforce by litigation or otherwise a security interest, lien or other claim on behalf of the principal with respect to tangible personal property or an interest in tangible personal property;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(e). Manage or conserve tangible personal property or an interest in tangible personal property on behalf of the principal, including:

(1). Insuring against liability or casualty or other loss; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(2). Obtaining or regaining possession of or protecting the property or interest by litigation or otherwise; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(3). Paying, assessing, compromising or contesting taxes or assessments or applying for and receiving refunds in connection with them; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(4). Moving the property from place to place; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(5). Storing the property for hire or on a gratuitous bailment; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(6). Using and making repairs, alterations or improvements to the property; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(7). Changing the form of title of an interest in tangible personal property. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-936. STOCKS AND BONDS

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to stocks and bonds authorizes the agent to: [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(a). Buy, sell and exchange stocks and bonds;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). Establish, continue, modify or terminate an account with respect to stocks and bonds;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(c). Pledge stocks and bonds as security to borrow, pay, renew or extend the time of payment of a debt of the principal;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(d). Receive certificates and other evidences of ownership with respect to stocks and bonds; and

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(e). Exercise voting rights with respect to stocks and bonds in person or by proxy, enter into voting trusts and consent to limitations on the right to vote.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-937. COMMODITIES AND OPTIONS

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to commodities and options authorizes the agent to: [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(a). Buy, sell, exchange, assign, settle and exercise commodity futures contracts and call or put options on stocks or stock indexes traded on a regulated option exchange; and

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). Establish, continue, modify and terminate option accounts.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-938. BANKS AND OTHER FINANCIAL INSTITUTIONS

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to banks and other financial institutions authorizes the agent to: [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(a). Continue, modify and terminate an account or other banking arrangement made by or on behalf of the principal;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). Establish, modify and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm or other financial institution selected by the agent;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(c). Contract for services available from a financial institution, including renting a safe deposit box or space in a vault;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(d). Withdraw, by check, order, electronic funds transfer or otherwise, money or property of the principal deposited with or left in the custody of a financial institution;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(e). Receive statements of account, vouchers, notices and similar documents from a financial institution and act with respect to them;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(f). Enter a safe deposit box or vault and withdraw or add to the contents;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(g). Borrow money and pledge as security personal property of the principal necessary to borrow money or pay, renew or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(h). Make, assign, draw, endorse, discount, guarantee and negotiate promissory notes, checks, drafts and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order, transfer money, receive the cash or other proceeds of those transactions and accept a draft drawn by a person upon the principal and pay it when due;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(i). Receive for the principal and act upon a sight draft, warehouse receipt or other document of title, whether tangible or electronic, or other negotiable or nonnegotiable instrument;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(j). Apply for, receive and use letters of credit, credit and debit cards, electronic transaction authorizations and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(k). Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-939. OPERATION OF ENTITY OR BUSINESS

Subject to the terms of a document or an agreement governing an entity or an entity ownership interest, and unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to operation of an entity or business authorizes the agent to: [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(a). Operate, buy, sell, enlarge, reduce or terminate an ownership interest;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). Perform a duty or discharge a liability and exercise in person or by proxy a right, power, privilege or option that the principal has, may have or claims to have;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(c). Enforce the terms of an ownership agreement;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(d). Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation to which the principal is a party because of an ownership interest;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(e). Exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege or option the principal has or claims to have as the holder of stocks and bonds;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(f). Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation to which the principal is a party concerning stocks and bonds;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(g). With respect to an entity or business owned solely by the principal:

(1). Continue, modify, renegotiate, extend and terminate a contract made by or on behalf of the principal with respect to the entity or business before execution of the power of attorney; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(2). Determine:

(i) The location of its operation;

(ii) The nature and extent of its business;

(iii) The methods of manufacturing, selling, merchandising, financing, accounting and advertising employed in its operation;

(iv) The amount and types of insurance carried; and

(v) The mode of engaging, compensating and dealing with its employees and accountants, attorneys or other advisors; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(3). Change the name or form of organization under which the entity or business is operated and enter into an ownership agreement with other persons to take over all or part of the operation of the entity or business; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(4). Demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the entity or business and control and disburse the money in the operation of the entity or business; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(h). Put additional capital into an entity or business in which the principal has an interest;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(i). Join in a plan of reorganization, consolidation, conversion, domestication or merger of the entity or business;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(j). Sell or liquidate all or part of an entity or business;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(k). Establish the value of an entity or business under a buy-out agreement to which the principal is a party;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(l). Prepare, sign, file and deliver reports, compilations of information, returns or other papers with respect to an entity or business and make related payments; and

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(m). Pay, compromise or contest taxes, assessments, fines or penalties and perform any other act to protect the principal from illegal or unnecessary taxation, assessments, fines or penalties, with respect to an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-940. INSURANCE AND ANNUITIES

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to insurance and annuities authorizes the agent to: [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(a). Continue, pay the premium or make a contribution on, modify, exchange, rescind, release or terminate a contract procured by or on behalf of the principal that insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). Procure new, different and additional contracts of insurance and annuities for the principal and the principal's spouse, registered domestic partner, children and other dependents and select the amount, type of insurance or annuity and mode of payment;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(c). Pay the premium or make a contribution on, modify, exchange, rescind, release or terminate a contract of insurance or annuity procured by the agent;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(d). Apply for and receive a loan secured by a contract of insurance or annuity;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(e). Surrender and receive the cash surrender value on a contract of insurance or annuity;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(f). Exercise an election;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(g). Exercise investment powers available under a contract of insurance or annuity;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(h). Change the manner of paying premiums on a contract of insurance or annuity;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(i). Change or convert the type of insurance or annuity with respect to which the principal has or claims to have authority described in this section;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(j). Apply for and procure a benefit or assistance under a statute or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(k). Collect, sell, assign, hypothecate, borrow against or pledge the interest of the principal in a contract of insurance or annuity;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(l). Select the form and timing of the payment of proceeds from a contract of insurance or annuity; and

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(m). Pay, from proceeds or otherwise, compromise or contest, and apply for refunds in connection with, a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-941. ESTATES, TRUSTS AND OTHER BENEFICIAL INTERESTS

(a). As used in this section, "estate, trust and other beneficial interest" means a trust, probate estate, guardianship, conservatorship, escrow or custodianship or a fund from which the principal is, may become or claims to be entitled to a share or payment.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to estates, trusts and other beneficial interests authorizes the agent to:

- (1). Accept, receive, receipt for, sell, assign, pledge or exchange a share in or payment from the fund; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]
- (2). Demand or obtain money or another thing of value to which the principal is, may become or claims to be entitled by reason of the fund, by litigation or otherwise; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]
- (3). Exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]
- (4). Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation to ascertain the meaning, validity or effect of a deed, will, declaration of trust or other instrument or transaction affecting the interest of the principal; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]
- (5). Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation to remove, substitute or surcharge a fiduciary; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]
- (6). Conserve, invest, disburse or use anything received for an authorized purpose; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]
- (7). Transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities and other property to the trustee of a revocable trust created by the principal as settler. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-942. CLAIMS AND LITIGATION

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to claims and litigation authorizes the agent to: [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(a). Assert and maintain before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment or defense, including an action to recover property or other thing of value, recover damages sustained by the principal, eliminate or modify tax liability or seek an injunction, specific performance or other relief;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). Bring an action to determine adverse claims or intervene or otherwise participate in litigation;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(c). Seek an attachment, garnishment, order of arrest or other preliminary, provisional or intermediate relief and use an available procedure to effect or satisfy a judgment, order or decree;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(d). Make or accept a tender, offer of judgment or admission of facts, submit a controversy on an agreed statement of facts, consent to examination and bind the principal in litigation;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(e). Submit to alternative dispute resolution, settle and propose or accept a compromise;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(f). Waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon which process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive, execute and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement or other instrument in connection with the prosecution, settlement or defense of a claim or litigation;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(g). Act for the principal with respect to bankruptcy or insolvency, whether voluntary or involuntary, concerning the principal or some other person, or with respect to a reorganization, receivership or application for the appointment of a receiver or trustee that affects an interest of the principal in property or other thing of value;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(h). Pay a judgment, award or order against the principal or a settlement made in connection with a claim or litigation; and

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(i). Receive money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-943. PERSONAL AND FAMILY MAINTENANCE

(a). Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to personal and family maintenance authorizes the agent to:

(1). Perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse or the principal's registered domestic partner and the following individuals, whether living when the power of attorney is executed or later born:

(i) Individuals legally entitled to be supported by the principal; and

(ii) Individuals whom the principal has customarily supported or indicated the intent to support; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(2). Make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(3). Provide living quarters for the individuals described in paragraph (1) by:

(i) Purchase, lease or other contract; or

(ii) Paying the operating costs, including interest, amortization payments, repairs, improvements and taxes, for premises owned by the principal or occupied by those individuals; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(4). Provide normal domestic help, usual vacations and travel expenses and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education, and other current living costs for the individuals described in paragraph (1); [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(5). Pay expenses for necessary health care and custodial care on behalf of the individuals described in paragraph (1); [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(6). Act as the principal's personal representative pursuant to the federal Health Insurance Portability and Accountability Act of 1996, 42 United States Code, Section 1320d et seq., as amended, and applicable regulations, in making decisions related to the past, present or future payment for the provision of health care consented to by the principal or anyone authorized under the law of this State to consent to health care on behalf of the principal; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(7). Continue any provision made by the principal for automobiles or other means of transportation, including registering, licensing, insuring and replacing them, for the individuals described in paragraph (1); [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(8). Maintain credit and debit accounts for the convenience of the individuals described in paragraph (1) and open new accounts; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(9). Continue payments incidental to the membership or affiliation of the principal in a religious institution, club, society, order or other organization or to continue contributions to those organizations. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(b). Authority with respect to personal and family maintenance is neither dependent upon, nor limited by, authority that an agent may or may not have with respect to gifts under this Part.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-944. BENEFITS FROM GOVERNMENTAL PROGRAMS OR CIVIL OR MILITARY SERVICE

(a). As used in this section, "benefit from governmental programs or civil or military service" means any benefit, program or assistance provided under a statute, rule or regulation including Social Security, Medicare and Medicaid.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to benefits from governmental programs or civil or military service authorizes the agent to:

- (1). Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in section 5-943, subsection (a), paragraph (1) and for shipment of their household effects; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]
- (2). Take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate or other instrument for that purpose; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]
- (3). Enroll in, apply for, select, reject, change, amend or discontinue, on the principal's behalf, a benefit or program; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]
- (4). Prepare, file and maintain a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal may be entitled under a statute, rule or regulation; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]
- (5). Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation concerning any benefit or assistance the principal may be entitled to receive under a statute, rule or regulation; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]
- (6). Receive the financial proceeds of a claim described in paragraph (4) and conserve, invest, disburse or use for a lawful purpose anything so received. [2009, c. 652, Pt. A, §18 (AMD) .]

[2009, c. 652, Pt. A, §18 (AMD) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF). 2009, c. 652, Pt. A, §18 (AMD).

§5-945. RETIREMENT PLANS

(a). As used in this section, "retirement plan" means a plan or account created by an employer, the principal or another individual to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary or owner, including a plan or account under the following sections of the federal Internal Revenue Code:

- (1). An individual retirement account under 26 United States Code, Section 408, as amended; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]
- (2). A Roth individual retirement account under 26 United States Code, Section 408A, as amended; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(3). A deemed individual retirement account under 26 United States Code, Section 408(q), as amended; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(4). An annuity or mutual fund custodial account under 26 United States Code, Section 403(b), as amended; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(5). A pension, profit-sharing, stock bonus or other retirement plan qualified under 26 United States Code, Section 401(a), as amended; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(6). A plan under 26 United States Code, Section 457(b), as amended; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(7). A nonqualified deferred compensation plan under 26 United States Code, Section 409A, as amended. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to retirement plans authorizes the agent to:

(1). Select the form and timing of payments under a retirement plan and withdraw benefits from a plan; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(2). Make a rollover, including a direct trustee-to-trustee rollover, of benefits from one retirement plan to another; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(3). Establish a retirement plan in the principal's name; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(4). Make contributions to a retirement plan; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(5). Exercise investment powers available under a retirement plan; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(6). Borrow from, sell assets to or purchase assets from a retirement plan. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-946. TAXES

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to taxes authorizes the agent to: [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(a). Prepare, sign and file federal, state, local and foreign income, gift, payroll, property, Federal Insurance Contributions Act and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under 26 United States Code, Section 2032A, as amended, closing agreements and any power of attorney required by the federal Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). Pay taxes due, collect refunds, post bonds, receive confidential information and contest deficiencies determined by the federal Internal Revenue Service or other taxing authority;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(c). Exercise any election available to the principal under federal, state, local or foreign tax law; and

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(d). Act for the principal in all tax matters for all periods before the federal Internal Revenue Service or other taxing authority.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-947. GIFTS

(a). As used in this section, a gift "for the benefit of" a person includes a gift to a trust, an account under the Maine Uniform Transfers to Minors Act and a tuition savings account or prepaid tuition plan as defined under 26 United States Code, Section 529, as amended.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). An agent may make a gift of the principal's property only as the agent determines is consistent with the principal's objectives if known by the agent and, if unknown, as the agent determines is consistent with the principal's objectives based on all relevant factors, including:

(1). The value and nature of the principal's property; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(2). The principal's foreseeable obligations and need for maintenance; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(3). Minimization of taxes, including income, estate, inheritance, generation-skipping transfer and gift taxes; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(4). Eligibility for a benefit, a program or assistance under a statute, rule or regulation; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(5). The principal's personal history of making or joining in making gifts. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

Subpart 3: STATUTORY FORMS

§5-951. AGENT'S CERTIFICATION

The following optional form may be used by an agent to certify facts concerning a power of attorney.

*AGENT'S CERTIFICATION AS TO THE VALIDITY OF
POWER OF ATTORNEY AND AGENT'S AUTHORITY*

State of

County of

I,(Name of Agent), certify under penalty of perjury that(Name of Principal) granted me authority as an agent or successor agent in a power of attorney dated I further certify that to my knowledge:

(1) The Principal is alive and has not revoked the Power of Attorney or my authority to act under the Power of Attorney and the Power of Attorney and my authority to act under the Power of Attorney have not terminated;

(2) If the Power of Attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred;

(3) If I was named as a successor agent, the prior agent is no longer able or willing to serve; and

(4)

.....
.....
.....
.....

(Insert other relevant statements)

SIGNATURE AND ACKNOWLEDGMENT

Agent's Signature

Date

Agent's Name Printed

Agent's Address

Agent's Telephone Number

This document was acknowledged before me on

(Date)

by

(name of Agent)

..... (Seal, if any)

Signature of Notary/Attorney

My commission expires:

This document prepared by:

.....

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

Subpart 4: MISCELLANEOUS PROVISIONS

§5-961. UNIFORMITY OF APPLICATION AND CONSTRUCTION

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-962. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

This Part modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001 et seq., but does not modify, limit or supersede 15 United States Code, Section 7001(c), or authorize electronic delivery of any of the notices described in 15 United States Code, Section 7003(b). [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-963. EFFECT ON EXISTING POWERS OF ATTORNEY

Except as otherwise provided in this Part, on July 1, 2010: [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(a). This Part applies to a power of attorney created before, on or after July 1, 2010;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). This Part applies to a judicial proceeding concerning a power of attorney commenced on or after July 1, 2010; and

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(c). This Part applies to a judicial proceeding concerning a power of attorney commenced before July 1, 2010, unless the court finds that application of a provision of this Part would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that provision does not apply and the superseded law applies.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

An act done before July 1, 2010 is not affected by this Part. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

§5-964. EFFECTIVE DATE

This Part takes effect July 1, 2010. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 127th Maine Legislature and is current through October 1, 2016. The text is subject to

change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.